

**Can LLC-s gain time for fulfilling their mandatory capital increase obligation beyond the
15 March 2016 deadline?**

Are there any ways in which limited liability companies can gain time for fulfilling their obligation of mandatory capital increase the deadline of which was set by 15 March 2016? According to the expert of Kovács Réti Attorneys at Law this will prove to be a crucial issue for many LLC-s as a number of enterprises face considerable difficulties to increase their capital to the threshold of HUF 3 000 000 by 15 March 2016 the latest. This however, is a statutory requirement for all the companies whose capital has been below this amount in the past.

The civil code that entered into force on 15 March this year provides various possibilities to be grasped by newly founded companies, and those with a lower equity ratio or thriving hard to succeed, for alleviating the discharge of their mandatory capital increase obligations – introduced the key points Dr Arvid Hauck.

One of the ways – as it had been reported by the expert of Kovács Réti Szegheő Attorneys at Law in a previous article – is the possibility for performing capital increase by way of non-cash contribution, the so called contribution in-kind.

As another possibility, in certain cases the members may provide themselves a time-frame of maximum three years for the fulfilment of the payment obligation, starting from the date of the resolution of the capital increase.

The possibility provided by the general rule

As a general rule the members are enabled to pay up, by a date specified in the company's articles of association, the amount of the capital increase remaining after the immediate payment has been made. However, the articles of association may not prescribe for completion a time-frame exceeding a three year period.

Plainly, the members may perform the payment of the capital increase whenever they wish, provided that they do so within three years from the date of the resolution. We must not forget though, that this will impose liability on the members for the company's debts to the extent of their unpaid monetary contribution to the capital increase amount.

For instance if the members resolve on 1 December 2014 to increase the company's capital by HUF one and a half million, they must proceed with the payment by no later than 1 December 2017, meaning that their liability for the debts of the company will subsist for the whole term until the deadline, up to the extent of the unpaid amount of the capital increase.



A considerable limitation

Previous publications discussing this subject have generally failed to mention that there is a considerable limit to the application of the above rule – warns Dr Arvid Hauck.

Namely, whenever the amount of the capital increase reaches or goes beyond half of the initial capital, non-cash capital contributions must be made available to the company in full prior to the submission of the application for registration of changes.

As follows, the preferential payment schedule may not be applied in the above case. Therefore, if the initial capital of our company equals HUF five hundred thousand and it must be increased by HUF two and a half million, we will have to pay up the amount of capital increase in full by the time of the submission of our application for registration of changes.

In accordance with the above detailed rules, there is a possibility for the members, subsequent to amending the articles of association, to decide to perform the capital increase in a way which would leave them a three year period for the payment of the difference, provided that the amount of capital increase does not exceed the existent initial capital.

The question of dividends

In respect of the beneficial treatment it is worth noting that whenever, via the articles of association, the members allow for the possibility of performing less than half of the capital increase amount by the time of submission of the application for registration of changes, in the interest of protecting the creditors of the company no dividend may be distributed to the members until they have met the payment obligations regarding their core deposits.

The same applies when the articles of association prescribe a period beyond a year's time for performing the payment of capital contribution in cash. In addition, it is important to remember that in the above case the failure to meet the deadline of a given member followed by and his or her failure to accomplish the payment within the thirty day period subsequent to the managing director's warning would imply the termination of his or her membership.

Should the company pay dividends to the members despite the prohibition; the members will be bound to repay that in compliance with the statutory provisions.

To answer to the opening question: yes, in certain cases there is a way for gaining time, namely if a given company can manage to bring a resolution aimed at the increase of capital at the beginning of 2016 while stipulating a three-year time-frame for its payment, the members will be obliged to fulfil their payment obligation by early 2019 – pointed out in conclusion the expert of Kovács Réti Szegheő Attorneys at Law.