

Only three months are left for limited liability companies to implement capital increase

Presently, there are over 130,000 limited liability companies in Hungary having a registered capital less than three million Forints despite of the three-month deadline available for them to increase their registered capital. Failing to increase registered capital may imply a fine of several hundred thousand Forints. The new Civil Code provides more than one options for an increase in the registered capital.

The members are in the position to increase the registered capital of the limited liability company by providing cash contribution by wire transfer to the bank account, or by payment into the petty cash, of the company. At the same time, the full amount of cash contribution does not need to be paid upon resolution of the capital increase because the members may agree on the adjournment of the payment to a later date. The last date for the payment of the cash contribution resolved upon the increase of the registered capital can be specified by the members to be the 59th day following the third month after adoption of the report for the business year subsequent to the business year when the registered capital was increased.

On the other hand, an increase in the registered capital by way of postponed payment of cash contribution entails disadvantages. Namely, the member is not entitled to dividends pending full payment of his contribution and will be held liable for the debts of the limited liability company up to the amount of the unpaid contribution until that time. Our recommendation to those assuming disadvantages involved with postponed payment is that they should pass a resolution on postponed capital increase within the business year of 2016 in order to gain an additional year.

In addition to the increase in registered capital by postponed payment of contribution, the members also have the option to provide their claims *vis-à-vis* third parties to the company upon resolution of the increase in the registered capital. No claim may be provided as in-kind contribution unless it has been acknowledged by the debtor or is based on final court decision. The new Civil Code does not exclude the possibility that the member provides the amount of the member's outstanding loan owed by the limited liability company as in-kind contribution to the company upon resolution of the increase in registered capital.

In addition to the aforesaid claims, the member may provide real property, passenger car and other movable properties, or even his own know-how, as in-kind contribution to the limited liability company. The members will determine the value of the in-kind contribution. The difference arising from the overvaluation of the in-kind contribution may be claimed by the company from its member within five years of the provision of such in-kind contribution. The members who accepts the value of the in-kind contribution as of the date of its provision deliberately as over-valuated shall be held jointly and severally liable together with the party providing the in-kind contribution for all damages arising from it *vis-à-vis* the company.

If the value of the in-kind contribution is less than 50% of the registered capital of the company, the provision of the in-kind contribution can be postponed by a maximum of three years following the registration of the increase in registered capital.



The registered capital can be increased by involving a new member or to the debit of the assets over the registered capital.

In short, the new Civil Code provides for the opportunity to increase capital in a new, innovative way. Conscious planning requires time. It is not too late to start; however, it does no good procrastinating the decision until the very end.