

### **Capital increase, which is not directly paid to the companies**

As of this summer, as a result of a complex legislative amendment, it is possible to increase the registered capital of a limited liability company or a private company limited by shares by providing cash contribution in a way that the payable amount does not appear either on the petty cash or the payment account of the company, hence it may be directly provided as the fulfilment of a payment obligation of the company. However, Act V of 2013 on the Civil Code (hereinafter referred to as: the Civil Code) has not included any explicit provisions of exclusion for the payment of the cash contribution to the “hand” of third parties before, it should be noted that the Civil Code does not include any explicit rule either, which would enable this method.

Agreeing with the explanation of the complex legislative amendment referred to above, it is our view, it has a relevance of a wide scope that any member or shareholder or the person, who wishes to join the company, does not need to pay his cash contribution directly to the company, if none of the persons concerned wishes that. Thus, for example, the Civil Code itself specifies cases, when the capital is increased for the sole reason that the company is encumbered by urgent external claims, namely there is a risk of insolvency or even it has already occurred. However, several other less tight situations may also be listed, in case of which the amount of the cash contribution to appearing on the accounts or the petty cash of the company cannot be considered as necessary from practical point of view. Such an example may be, if the members of the company resolve the capital increase so the company can purchase (and pay for) certain assets in the short run from the amount accumulated. In such cases, Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings regulating – among others – the registration of the changes of the company data in the company registry, required the attachment of a certificate issued by the executive officer or the payment service provider of the company on the payment made and the contribution received with respect to the capital increase, for the registration of the capital increase by new cash contribution in the company registry. Accordingly, the former practice was that, even if it was already obvious where the company will transfer the amount of the capital increase, the members have always provided the contribution in cash to the company, so that the annexes will be available for the company procedure to be initiated in the subject of the capital increase. The administrative burden arising from this solution, the time loss and the extra transaction costs was a natural part of the process during the former regulatory system.



The legislator has amended the system laid down above, among others referring to the practical deficiencies mentioned above, that such a resolution on capital increase may be passed, where the members or the shareholders of the company appoint a third party outside the company, to whom the capital increase in the form of cash contribution shall be paid under the conditions stipulated in the resolution, as the performance of a payment obligation of the company. In such a case, the executive officer of the company is required to issue a certificate stating only that the new cash contribution was provided in accordance with the resolution, hence she does not need to declare that the amount is received by the company, thus removing the former obstacles of a primarily administrative nature. We should note that in our view, the executive officer should request a written acknowledgement from the obligee on the performance of the debt of the company, directly paid by the person, who performed the capital increase, as taking due care.

It is worth noting certain limitations in connection with this solution. Thus, it may be only applied for limited liability companies and private companies limited by shares and only at the time of capital increase, thereby it is not allowed to apply it for other company forms or at the time of the establishment. In addition to that, it cannot be used to give preference to or defraud creditors or for the disposal of assets which would otherwise serve to satisfy their claims, thus the application of this method for companies, in respect of which the company registry includes insolvency proceedings (bankruptcy- or liquidation proceedings), involuntary de-registration procedure, declaration of dissolution or enforcement procedure in progress, is excluded. In addition to that, since it is a new legal alternative, there is no obvious and widely acknowledged position regarding the applicability of this solution in case of capital increase with share premium, for the cash contribution paid in the capital reserve, therefore we would suggest to act carefully.