

### **Is the mandatory capital increase of limited liability companies still postponed?**

**More than 60,000 companies must increase their registered capital till 15 March. Thousands of undertakings will be probably dissolved because they cannot or do not intend to fulfil this requirement. According to the Ministry for Justice, companies will not be granted an additional time limit, but according to the attorney companies are allowed to provide cash contribution even decades later.**

Limited liability companies having a registered capital of less than three million Forints have got more than one month left for the change. After the two-year extension and the one-year postponement adopted last year, no more grace period will be granted: the registered capital must be increased to at least three million Forints until 15 March. The obligation affects a great many undertakings. According to the data of Opten Company Information Service, currently 348,000 limited liability companies operate in Hungary, and more than 18 percent of such companies, notably about 63,000 limited liability companies have a registered capital of less than three million Forints. This number was approximately 100,000 one year ago, i.e. the majority of the companies has not yet taken any measures. We asked the Ministry for Justice whether an additional grace period can be expected due to a large number of companies which have not yet fulfilled the obligation but according to the answer of the Ministry, the issue is not included in the legislative program of the government in the first half year. If the lowest possible registered capital of HUF 500,000 is taken into consideration, the owners of undertakings concerned must provide a total of HUF 158 billion to their companies.

#### **It can be fulfilled in several ways**

The requirements can be fulfilled in several ways. The expert of Kovács Réti Szegheő Attorneys-at-Law, dr. Miklós Vida drew the attention that the increase of registered capital can be fulfilled in many other ways in addition to the simple cash payment.

- From the assets in excess of the registered capital of the limited liability company, for example, against free accumulated profit reserve
- By in-kind contribution, which can be a real estate, a motor vehicle or a painting or know-how of large value.
- by loan granted by a member to the limited liability company to be provided as contribution in-kind or



- by a final and binding claim of a member against a third party, acknowledged or enforced in court proceedings
- by involving a new member in the company.

According to Miklós Vida, *“the payment of cash contribution can be postponed for even decades.”* The member’s meeting may also set a deadline of 2030 or even later for performing cash contribution, but a decision must be made as early as before the deadline in March. According to the emerging judicial practice, the grace period does not violate the interests of those persons who may have a claim against the limited liability company (business partners, tax authority).

However, this solution also has disadvantages: in certain cases, dividends cannot be paid out, quotas cannot be sold or the registered capital cannot be further increased. The attention must be paid in case of deferred payment that if the equity capital of a limited liability company does not reach 3 million Forints in two consecutive fiscal years, then the court of registration may even delete the limited liability company from the registry.

### **There are other duties to do**

The companies may also have an option not to increase the capital, rather they change their company form. There is no minimum registered capital in limited partnership or unlimited partnership. It is true that the general partner of the limited partnership is personally liable out of his/her personal assets for the obligations of the company, whereas the members of a limited liability company only up to the amount of the registered capital. It is important to know that the limited liability companies considered must not only increase their registered capital until 15 March, but their Articles of Association must also be brought into line with the provisions of the Civil Code entered into force in 2014 –Miklós Vida said.

The capital increase and related changes to be made in accordance with the provisions of the Civil Code are free of charge, but if there are other changes in the company’s data, general stamp duty and publication fee must be paid in the total amount of HUF 18,000. Attorney’s fee must be paid for the changes in any case, which varies from HUF 50,000 to HUF 100,000. Limited liability companies must decide on the capital increase, reorganisation or on a possible dissolution until 15 March at the latest. The relevant corporate resolution and the related documents must be submitted to the competent court of registration until 14 April.



### **Is it worth changing the company form?**

According to the head of tax services of RSM Hungary Tax and Financial Service, Sándor Hegedűs, there are advantages and disadvantages if limited liability companies with less capital are transformed into limited partnerships or unlimited partnerships.

#### **Advantages**

- it is free from tax and contributions under certain conditions
- tax method can also be changed during transformation, if for example the limited liability company has been taxed on the basis of small business tax (KIVA), the limited partnership may choose small taxpayers' itemized lump sum tax (KATA)
- the company's asset and liabilities may be re-evaluated during transformation, but it may complicate the administration and may also involve tax liabilities.
- the registered capital of limited liability companies may be decreased as limited partnerships and unlimited partnerships have no requirements for the amount of the capital (if the change takes place by capital withdrawal, it may have taxation consequences for a private person.

#### **Disadvantages:**

- it implies cumbersome administration (audit obligation, preparing the balance sheet and property inventory of the company on two occasions, disclosure requirement)
- it requires time and costs
- the chains of responsibilities are changed in the company, the limited liability becomes unlimited for the general partner of the limited partnership and for the members of the unlimited partnership.

#### **Millions in fines may be imposed after notice**

*“Judicial review proceedings may be instituted ex-officio against the companies who fail to perform it”*– the spokesperson of the Budapest-Capital Regional Court, Anna Madarasi informed Origo. According to the principle of gradual approach, limited liability companies are at first invited to perform, then *a fine amounting from HUF 100,000 up to HUF 10 million is expected to be imposed on them*, and the company may also be dissolved as a last resort.



Not only undertakings but also their representatives can be penalised: for example a person, who was an executive officer or a majority owner of a company dissolved by compulsory strike-off and leaving debt behind, may be forbidden for five years to manage a company, or to establish a one-person company or to acquire a majority ownership in a company.