

## **Mandatory increase of capital without capital contribution in cash?**

**It is primarily small size companies that might have to face the challenges arising with the amendment that took effect with the new Civil Code entering into force, stipulating that the initial capital of limited liability companies registered prior to the effective date of said act must be increased to HUF 3 000 000 simultaneously with the first modification of the articles of association, but no later than 15 March 2016 – raised the attention of Origo the legal expert at Kovács Réti Szegheő Attorneys at Law. However, economic actors are largely unacquainted with the fact that besides providing cash contribution, the so-called in-kind contribution can also be an alternative means for raising capital – said attorney dr Arvid Hauck.**

The amendments carry considerable implications, as any company that fails to perform the increase of capital before the predefined deadline will have to bring a decision about the company's reorganisation, merger or dissolution without succession.

At the same time, the so-called in kind contribution as an optional means of capital increase besides the provision of capital contribution in cash may significantly facilitate the performance of capital increase for numerous companies, many being unfamiliar with this possibility - emphasized the expert of Kovács Réti Szegheő Attorneys at Law.

### **In-kind contribution**

As non-cash capital contribution the founder or member may provide in-kind contribution in the form of ownership rights of tangible assets (e.g. motor vehicles) or any valuable rights and interests (e.g. intellectual property rights, know-how) to the legal person.

The value of the in-kind contribution must correspond with the value indicated by the members in the articles of association, since the person providing non-monetary contribution is liable for any eventual difference.

The law clearly stipulates that non-cash contribution may also be provided in the form of receivables, provided that it is acknowledged by the debtor or if it is based on a final court ruling– said dr Arvid Hauck. Unfortunately the courts of registration do not exercise uniform interpretation of the rules of in-kind contribution.

### **The courts of registration exercise inconsistent interpretation**

Despite the cogency i.e. non-dispositive nature of the above provision, certain courts of registration exhibit a tendency towards the practice to demand expired maturity regarding the receivables, in addition to the requirements of the acknowledgement by the debtor and the final court ruling as the basis of enforceability.

As an established practice to tackle the problem in the event that the court has imposed, as a precondition of capital increase registration, the receivables' expired maturity and the company does not intend to appeal against the court order calling for deficiency correction, the obligee may grant deferred payment to the obligor by which the parties provide for the expiry of the



receivables to be injected but at the same time the payment liabilities do not need to be fulfilled immediately.

Considering that capital increase necessitates the amendment of the articles of association, the rules regarding the registration of amendment must be applied to the transaction, which stipulate inter alia that the provisions governing the establishment of companies must be applied to the amendment of the articles of association.

Pursuant to the regulations governing company establishment, if the value of the in-kind contributions at the time of foundation reaches or exceeds half of the initial capital, it must be made available to the company in its entirety before the time of submission of the application for registration, however, if it does not exceed the above threshold, the in-kind contribution may be provided within a three-year period specified by the law – pointed out the expert of Kovács Réti Szegheő Attorneys at Law.

#### **Many will avail of this opportunity**

Thus the provisions of the new Civil Code do not require members of limited liability companies with an initial capital lower than HUF 3 000 000 to pay up the difference in cash.

The provisions also allow for the possibility of making available to the company other tangible assets, valuable rights and interests, or receivables if acknowledged by the debtor, which is an opportunity that many companies will most probably take advantage of, with the approaching of the March 15, 2016 deadline – predicted dr Arvid Hauck.