

The option for increase and simultaneous decrease of the capital of a company is laid down in Articles 149(1) and 203 of the Commercial Code (CC) with regard to limited liability companies and shareholding companies respectively. The capital of the two types of companies can be increased and simultaneously decreased under the condition that the decrease would take effect only when the planned increase of the capital is carried out. The increase of the capital is a condition precedent for the decrease to be allowed and the registration authority (the official at the Companies Register) verifies it ex officio for registration with a single decision on both the increase and decrease.

The objective of the procedure is to achieve a positive accounting balance with fresh resources paid in by existing or new partners or shareholders of the company. The increase and simultaneous decrease of the capital is a way to rehabilitate the company in case it has negative balance and to adjust the capital entered into the Companies Register to the value of the company's net assets. This is a nominal decrease of the capital rather than an effective one, which is intended to avoid a situation where the future operational revenues would be used to cover the losses generated as a result of the gap between the higher value of the capital and the lower net worth of the company. It is an intermediary stage used in view of the intended and actually achieved eventual increase of the capital. The capital is effectively increased simultaneously with the nominal decrease through a cash or non-cash contribution.

Depending on the parameters of the changes in the pipeline, the capital could be decreased below the statutory minimum amount provided that the increase of the capital reaches at least the minimum value prescribed by the law, i.e. BGN 2 for limited liability companies (OOD) and BGN 50 000 for shareholding companies (AD). Where the value of the capital which existed prior to the change is achieved or exceeded as a result of the increase, there is just a single stage of the procedure and the change is registered in the company's file at the Companies Register. Conversely, the first step is the announcement of the decision made by the General Meeting of the partners or shareholders on the increase and simultaneous decrease of the capital and then the new value of the capital is subject to registration only upon the expiration of the three-month time limit which is intended to protect creditors under Article 150 CC.

The procedure of increasing and simultaneously decreasing the capital is lawful only when it

follows the ways to decrease and increase the capital respectively, which are explicitly set out in the Commercial Code.

The capital of a limited liability company can be decreased through reduction of the value of the relevant share in the capital, return of the share in the capital to the partner who has wound up his participation, or discharge of the partner from the obligation to pay in the outstanding portion of the share. The capital of a shareholding company can be decreased through reduction of the face value of the shares or invalidation of shares. The decision on the increase and simultaneous decrease of the capital has to specify the purpose of the decrease, its amount and the way in which it will be carried out.

The capital of a limited liability company can be increased through increase of the equity, subscription of new shares or admission of new partners. The capital of a shareholding company can be increased through issuance of new shares, increase of the face value of shares which have already been issued or conversion of bonds into shares.

In this connection, the case law is straightforward in making it clear that the disposal of movable or immovable assets or accounts receivable, which have been contributed to the company, does not affect the value of the capital which, unlike the value of the company's property, is a static amount subject to change only when certain conditions are in place and a specific procedure is applied. Once contributed to the capital, these assets are booked in terms of their value and there is no obstacle to their subsequent disposal that will be recorded in the property items on the balance sheet and not in the capital of the company. The Commercial Code does not refer to the legal institutes of "subtraction or removal from the capital" or "de-contribution". In this sense, the disposal of objects and properties which have been contributed to the capital is not considered to be a way of decreasing the capital. It provides no legal grounds for any request to delete a non-cash contribution from the file of the company or to amend the Articles of Association or the Statutes and it is no reason for "deletion of shares" in a limited liability company, which have been subscribed through a non-cash contribution.