Capital Contributions In Joint Stock Companies

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Introduction

Under the Commercial Code 6102, shareholders must contribute capital to commercial companies incorporated by law (the so-called 'contribution obligation'). A contribution obligation mainly arises at the time of the incorporation of or the capital increase in a commercial company. Shareholders generally prefer fulfilling their contribution obligations in cash and their liability is limited to the amount that they subscribed for under a company's articles of association.

The Commercial Code stipulates deadlines for shareholders to fulfil their contribution obligations and failure to comply therewith may result in undesired legal consequences. This update examines the legal consequences for shareholders in joint stock companies whose capital subscription is paid in cash.

Deadlines

Under the Commercial Code, shareholders in a joint stock company must fulfil at least 25% of their contribution obligation before or at the time of incorporation or capital increase being registered with the relevant trade registry. The remaining 75% must be paid within 24 months of the relevant registration date.

Legal consequences

Specific performance and compensation

Under the Commercial Code, in the event that a shareholder does not fulfil its contribution obligation in due time, the joint stock company can serve a notification to request:

- that the defaulting shareholder fulfil its contribution obligation; and
- damages deriving from such a delay.

Default interest

In addition to a joint stock company's right of specific performance and compensation, the defaulting shareholder must also pay a default interest, without further notification, unless otherwise agreed under the articles of association.

Deprivation, sale of shares and decertification of shares

If a shareholder delays in fulfilling its contribution obligation, a joint stock company can:

- deprive the defaulting shareholder of the rights arising from its capital subscription or partial fulfilment of its capital obligation; and
- have the shares of the defaulting shareholder sold to a third party and decertify its share certificate.

For a joint stock company to deprive a defaulting shareholder of these rights it must notify the defaulting shareholder via the *Trade Registry Gazette,* the medium stipulated in the articles of association and a message published on the company's official website. The notification must include a payment request to be fulfilled within a month and a warning stating that non-payment will lead to penalties and a deprivation of the defaulting shareholder's rights. If the defaulting shareholder is the holder of the registered shares, such a request and warning must be made via a registered letter and a message must be published on the company's official website.

Penalty

Further, the defaulting shareholder may also be obliged to pay a penalty, if so agreed in the company's articles of association. In order for a joint stock company to claim a penalty, the notification process referred to above must be complied with.