

Getting Back the Money: Capital Decrease Restrictions in Serbia



The Serbian Companies Register's recent change of policy made a share capital decrease in a sole shareholder limited liability company practically impossible.

Capital decrease rules

The Serbian Companies Act (Companies Act) provides detailed rules on capital decrease only for joint stock companies, and such rules apply by reference (ie, *mutatis mutandis*) to a limited liability company (LLC). Hence, by the word of law, an LLC in Serbia can decrease its share capital either through (i) withdrawal and cancellation of shares or (ii) cancellation of the shares owned by the LLC itself.

Further, to decrease its share capital, the LLC must comply with the creditor protection rules, meaning it must (i) notify in writing each of its known creditors holding receivables of RSD 2 mn or more of the intended capital decrease and (ii) announce the intended share capital decrease on the website of the Companies Register continuously for three months. During this three-month waiting period, unsecured creditors of the LLC that acquired their receivables within 30 days following the announcement of the capital decrease (regardless of the maturity date of the receivables) may request from the LLC settlement or security for their receivables. If the LLC refuses, the aggravated creditors can request perfection of security from the court in a lawsuit, but would have to prove that settlement of their claims is endangered by the share capital decrease. Still, the lawsuit would effectively block the share capital decrease.

Only after this three-month waiting period, and upon creditor protection formalities being complied with, the capital decrease can be effectuated.

New policy of the Companies Register

According to the recent practice by the Companies Register, capital decrease rules relating to joint stock companies cannot in practice be applied *mutatis mutandis* to a limited liability anymore due to some ambiguities in the wording of the law. This means that currently a Serbian LLC with a single shareholder cannot decrease its share capital.

To explain, the Companies Register took a stance that Article 155 of the Companies Act provides for the possibility of the withdrawal and cancellation only of the entire shareholding of a shareholder, and not a part thereof, whereby in a sole shareholder LLC the shareholding of such shareholder may not be withdrawn and cancelled given that this would lead to the acquisition of its own shareholding by a sole shareholder company. This is not possible because a sole shareholder company, in terms of Article 157(6) of the Companies Act, may not acquire its own shareholding.

This (wrong) stance of the Companies Register was further confirmed by the Ministry of Economy when deciding on the appeal on such decision of the Companies Register in June 2014. In its reasoning, the Ministry copy-pasted the reasoning previously taken by the Companies Register in its decision and failed to explain why they took a completely different position than in their own opinion from December 2013 (where they confirmed that a share capital decrease through withdrawal and cancellation of shares is permitted).

While it is still to be seen whether the Companies Register and Ministry of Economy will revert to its practice when it comes to the share capital decrease procedure for LLCs, certain workaround solutions may enable an LLC to decrease its share capital while not entering into a formal statutory procedure. Still, it is expected that, for the sake of legal certainty, the Companies Register and Ministry of Economics will alter their views and make this legally prescribed procedure possible in practice. Until then, significant investor funds will remain trapped in the companies.

The Serbian Companies Register recently took a view that capital decrease rules cannot be applied to a limited liability companies anymore, which essentially made a share capital decrease not possible in sole shareholder limited liability companies.

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