



N. XENOFONTOS LLC

Keynotes on Capital Reduction of Cyprus Companies



Introduction

A company's **share capital** is the money that shareholders invest in order to start or expand the business; it is the lifeline of a company allowing it to operate, invest and function among other things.

The authorised capital of a company is the maximum amount of share capital that the company is authorised by its constitutional documents to issue to shareholders. Part of the authorised capital can remain unissued. The authorised capital can be changed with shareholders' approval. On the other hand, the issued share capital is the number of shares that have been issued to and held by the shareholders.

This article will provide a basic overview and the key considerations for a capital reduction of a Cyprus company.

Reasons for capital reduction

The reduction of share capital may, in certain circumstances, be used to:

- return capital to the shareholders that would otherwise not be distributable;
- convert non-distributable reserves to distributable reserves and reduce accumulated losses;

- Cancel paid – up share capital for the purposes of writing off company losses;
- Cancel paid – up share capital by the creation of a reserve, to be called “the capital reduction reserve fund” that is subject to the same treatment as a share premium account;
- lead to the return of any surplus capital to shareholders and
- facilitate the redemption or buyback of shares (in case of public company) where the company has insufficient distributable reserves.

The Capital Reduction Procedure

The provisions of the Companies Law, Cap.113 (the “Law”) (as amended from time to time) govern the procedure of capital reduction.

In a nutshell:

- Special resolution by the shareholders; (subject to the company’s articles of association permitting reduction);
- Petition to the court for sanctioning the reduction.
- Copy of court order and statement outlining the new capital structure, filed with the Registrar of Companies for registration. Recent practice has showed that the courts now request that the court order and resolution are published in the Official Government Gazette., although this is not a requirement.
- New certificate issued by the Registrar.

A reduction is only effective after the court order and the attached resolution are both filed with the Registrar.

The new certificate issued constitutes conclusive evidence that all legal requirements were complied with.

Considerations by the court when granting (or not) an order for reduction

The courts, as guards for other company stakeholders, exercise their powers with the prime concern being the legitimacy of the reduction, meaning, is the reduction honestly being based on commercial grounds or is it to deprive the company of its assets?

Practice has shown that the courts, in reaching their decision on whether to endorse a reduction of capital, have considered, inter alia, whether:

- All shareholders have been equally treated;
- The reasons for reduction have been properly and adequately explained;
- Any creditors' or third parties' interests and rights have been prejudiced and
- The reduction has an obvious purpose.

Not only do the courts consider the above, but the Law itself also provides some safeguards to protect creditors, one such safeguard being that the creditors have been informed of the imminent reduction of capital and have provided their consent thereto. On the contrary, when creditors or other interested third parties have not been informed and cannot therefore provide consent, the courts are less likely to sanction the reduction.

Connect with us

A: 140 Athalassas Avenue
3rd floor, 2024
Nicosia
Cyprus

T: +357 22 55 27 05
M: +357 99 332 532
E: info@xenofontosllc.com
W: www.xenofontosllc.com

Disclaimer

The information provided in this article is for general information purposes only. You should not rely on this material or information as a basis of making any business, legal or other decision. It is advisable to seek proper legal and or tax advice prior to entering into any transaction or relationship.