



**REDUCING THE CHARTER CAPITAL OF AN ENTERPRISE  
REGULATIONS AND PRACTICAL IMPLEMENTATION**

In 2023, facing immeasurable difficulties and challenges from the market, many businesses had to narrow the scope of production and business or cease or suspend their investment activities and project implementation. This leads to the fact that a part of the capital of enterprises would be temporarily idle due to the cessation/ suspension of those projects and plans. In this situation, numerous enterprises had reduced their charter capital for shareholders/ capital contributors to use the contributed capital/ returnable share payment for other objectives.

From the practice of consulting and supporting clients, ATA Global Legal Limited Company (ATA Legal Services) introduces the legal topic ***“REDUCING THE CHARTER CAPITAL OF AN ENTERPRISE<sup>1</sup> – WHAT TO PAY ATTENTION TO WHEN IMPLEMENTING IN PRACTICE”***. The goal of this topic is to give client not only an overview and comprehensiveness but also recommendations and notes on issues arising related to the process of reducing the charter capital of enterprises.

## **I. Charter capital and reduction of Charter capital**

According to Clause 34 Article 4 of the 2020 Law on Enterprises, charter capital is defined as *“the total value of assets contributed or promised by the members/partners/owners when the limited liability company or partnership is established; or the total of nominal values of the sold or subscribed shares when a joint stock company is established”*.

Simply, charter capital is the amount of capital registered by the enterprise when established, recorded in the Enterprise Registration Certificate and the company’s Charter. Beside a few cases of certain industries and fields where the legal capital level is required, in almost all cases, the law does not limit the minimum or maximum capital contribution but only requires capital contribution according to the amount registered in the enterprise establishment dossier. The amount of charter capital may increase or decrease during the operation of the enterprise, depending on the actual situation and needs of that enterprise.

## **II. Charter capital reduction cases**

The reduction of charter capital of an enterprise could only be implemented in specific cases with the following conditions:

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<sup>1</sup> Within the scope of this topic, we will only address the issue of reducing the capital of LLCs and JSCs governed by the law on enterprises, excluding other types of enterprises in the 2020 Law on Enterprises and public companies in accordance with the law on securities.

Issue	Multi-Member LLC	Single-Member LLC	Non-public JSC
<b>Legal basis</b>	Clause 3, Article 68 of the 2020 Law on Enterprises.	Clause 3, Article 87 of the 2020 Law on Enterprises.	Clause 5, Article 112 of the 2020 Law on Enterprises.
<b>Charter capital reduction cases</b>	The members fail to fully contribute capital within 90 days from the establishment date of the enterprise.	The owner fails to fully contribute capital within 90 days from the establishment date of the enterprise.	The shareholders fail to pay in full the shares as registered within 90 days from the establishment date of the enterprise.
	<p><b><i>1. The company partially reimburses the contributed capital to the members</i></b></p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>+ The company must reimburse according to the capital contribution proportion of the members in the company.</li> <li>+ The company has been operating continuously for at least 02 years since its establishment.</li> <li>+ The company must ensure full payment of debts and other property obligations after the reimbursement.</li> </ul>	<p><b><i>1. The company partially reimburses the contributed capital to the owner</i></b></p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>+ The company has been operating continuously for at least 02 years since its establishment.</li> <li>+ The company must ensure full payment of debts and other property obligations after the reimbursement.</li> </ul>	<p><b><i>1. The company partially reimburses the contributed capital to the shareholders</i></b></p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>+ Approved by the GMS;</li> <li>+ The company must reimburse according to the proportion of the share ownership in the company.</li> <li>+ The company has been operating continuously for at least 02 years since its establishment.</li> <li>+ The company must ensure full payment of debts and other property obligations after the reimbursement.</li> </ul>

	<p><b>2. <i>The company repurchases the contributed capital of the members</i></b></p> <p>Conditions: the members have voted against the resolution or decision of the BOD on the issue of company reorganization, amendment of the rights and obligations of the members, the BOD in the company's Charter or other cases under the company's Charter.</p>		<p><b>2. <i>The company repurchases shares at the request of the shareholders</i></b></p> <p>Conditions: the shareholders have voted against the resolution on the company reorganization or the change the rights and obligations of shareholders specified in the company's Charter.</p> <hr/> <p><b>3. <i>The company repurchases the shares according to the company's decision</i></b></p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>+ The company is entitled to repurchase up to 30% the total ordinary shares, all or part of the participating preference shares that have been sold.</li> <li>+ The company shall repurchase shares of each shareholder in proportion to the percentage of their share ownership in the company.</li> <li>+ The company must ensure full payment of debts and other property obligations after the repurchase.</li> </ul>
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### III. Implementation process

**3.1. In case the shareholders/members/owner fail(s) to fully contribute capital within the prescribed time limit when establishing the enterprise**

**Step 1:** To convene a meeting of the GMS/BOM on the charter capital reduction plan.

**Step 2:** To register the change of the charter capital and/or the list of members/shareholders with the business registration authority.

*Duration: 30 days from the deadline for capital contribution/share payment as prescribed.*

**Step 3:** To amend the Charter, register of shareholders/members; revoke and destroy the previous Capital Contribution Certificates/Share Certificates and re-issue the new ones.

**3.2. In case the company partially reimburses the contributed capital to the members/owner/shareholders**

**Step 1:** To convene a meeting of the GMS/BOM on the plan to partially return the contributed capital to the shareholders/members/owner to reduce the charter capital.

**Step 2:** To pay the return amount.

**Step 3:** To register the changes of enterprise registration contents to the business registration agency.

*Duration: 10 days from the date of changing the charter capital/the date of completing the payment.*

**Step 4:** To amend the Charter and the register of shareholders/members; to revoke and destroy the previous Capital Contribution Certificates/Share Certificates and re-issue the new ones.

**3.3. In case the company partially repurchase the contributed capital of the members/shareholders because they have voted against the amendment or supplementation of the rights and obligations of the members/shareholders and requested the company to repurchase their contributed capital/shares**

Step	Multi-member LLC	JSC
1	The members vote against the Resolution of the BOM on issues of company reorganization, amendment of rights and obligations of members, the BOM in the company's Charter, or other cases under the company's Charter.	The shareholders vote against the Resolution of the GMS on the reorganization of the company or the change the rights and obligations of the shareholders specified in the company's Charter.
2	The members submit a written request for repurchase of contributed capital to the company. <i>Duration: 15 days from the issuance date of the above Resolution.</i>	The shareholders submit a written request for repurchase of shares to the company. <i>Duration: 10 days from the date of adoption of the above Resolution.</i>
3	The BOM approves a Resolution on the contributed capital repurchase at the request of the members to reduce the Charter Capital.	The GMS approves a Resolution on the share repurchase at the request of the shareholders.
4	The company pays the repurchase amount to the members. <i>Duration: 15 days from the date of receipt of the repurchase request.</i>	The company pays the repurchase amount to the shareholders. <i>Duration: 90 days from the date of receipt of the repurchase request.</i>
5	The BOM approves the results of contributed capital repurchase.	The GMS/BOD approves the results of share repurchase.

<b>6</b>	Notice of change of the charter capital. <i>Duration: 10 days from the date of completion of the repurchase.</i>	Notice of change of the charter capital. <i>Duration: 10 days from the date of completion of the repurchase.</i>
<b>7</b>	To amend the Charter and the register of members; to revoke and destroy the old capital contribution certificates and re-issue the new ones.	To amend the Charter and register of shareholders; to revoke and destroy the previous shares and re-issue the new ones.

### **3.4. In case the company actively repurchase shares of the shareholders**

JSCs have the right to redeem within 30% of the total ordinary shares, part or all of the participating preference shares that have been sold with the following order:

**Step 1:** The GMS approves the Resolution on the redemption of shareholders. The GMS may assign the BOD to carry out the redemption process.

**Step 2:** The company submits a Notification of redemption to reduce the charter capital to all shareholders.

*Duration: 30 days from the issuance date of the Resolution on the redemption of shares.*

**Step 3:** The shareholders submit a written Registration/Refusal of the right to resell the shares to the company.

*Duration: 30 days from the date of receipt of the Notification of redemption to reduce the charter capital of the company.*

**Step 4:** The company pays the amount of redemption.

*Duration: As prescribed in the company's charter or other agreement between the parties.*

**Step 5:** The GMS/BOD approves the results of redemption.

**Step 6:** The company registers the change of the charter capital with the business registration authority.

**Step 7:** The company amends the Charter and register of shareholders; revokes and destroys the previous shares and re-issue the new ones.

## IV. Recommendations and notes in the procedure and dossier of charter capital reduction

### 4.1. Income tax of the members/owner/shareholders when reducing the charter capital

Except for the case of charter capital reduction due to the failure to contribute capital of the members/owner/shareholders when establishing the enterprise, the remaining cases of charter capital reduction, according to the provisions of the current Law on Enterprises, will lead to the return/repurchase of contributed capital/shares between the members/owner/shareholders and the company. In other words, the transfer of contributed capital/shares takes place. Therefore, the transaction of return/repurchase of contributed capital/shares is taxed similarly to the case of transfer of contributed capital/shares. Specifically:

#### *a. Regarding individual members/owner/ shareholders:*

- For the redemption/return of capital contribution in a LLC:

PIT for capital transfer activities in a LLC is only calculated on the difference between the transfer price and the initial purchase price of the transferred capital. Therefore, according to the provisions of the Law on Enterprises, it could be understood that the return of contributed capital will not incur a difference from the original contributed capital value. Therefore, PIT will not be incurred.

In case the company repurchases the contributed capital from the members, it is possible that the redemption value will be different (lower or higher) or equal to the value of contributed capital. In case the redemption value is higher than the original contributed capital value, the member will be subject to the corresponding tax rate according to the following formula:

**PIT for capital contribution repurchased to the company = 20% x (Repurchase price – Initial value of contributed capital)**

- For the capital return/share repurchase in a JSC:

Under the current provisions, when it comes to share transfer, the transferor will be subject to PIT at 0.1% of the transfer value, regardless the transferor profits earned from this activity. In practice, the repurchase of shares between the shareholders and the company is still considered a transfer and is subject to PIT as in other cases.

However, there is a special case when the JSC redeems the contribution capital of shareholders in proportion to their share ownership in the company. According to the above regulation, it could be understood that there is no transfer of shares between the shareholders and the company. However, the law is still silent on this issue, leading to the fact that there are insufficient grounds to determine



whether this case is considered as an act of capital return in a LLC and is subject to the PIT calculation applied for return/redemption transactions of contributed capital in a LLC?

***b. Regarding organization members/owner/shareholders:***

In case a member/owner/shareholder is an organization, CIT may arise from the charter capital reduction in cases of return/redemption of contributed capital/shares of the members/owner/shareholders, depending on the value that the organization receives from the company. Specifically:

$$\text{CIT} = 20\% \times (\text{Return/Redemption value} - \text{Initial value of contributed capital} - \text{Transfer cost})$$

***c. Time to declare income tax arising from the transfer***

- Time to declare PIT for the individual members/owner/shareholders: In case the enterprise pays tax on behalf of the members/shareholders, the tax declaration must be submitted before the list of members/shareholders is changed in accordance with the law<sup>2</sup>. According to the spirit of the above regulations, the declaration obligation of enterprises shall arise immediately after the payment completion of the returned contribution capital/ the redeemed contribution capital/shares.
- Time to declare CIT for the organization members/owner/shareholders: The time limit for submitting tax declaration is within 10 (ten) days from the date the competent authority approves the transfer of capital (which is the time when the business registration authority approves the capital reduction registration in case of capital return/repurchase)<sup>3</sup>.

## **4.2. Repurchase price**

According to the 2020 Law on Enterprises, the repurchase price of contributed capital/shares must be determined based on the market price or the price determined according to the company's regulations. In case an agreement on the repurchase price cannot be reached, the parties may request an appraisal organization to determine the price.

In practice, businesses often determine the repurchase price based on the face value or the book value of the business at the repurchase time.

## **4.3. Payment of reimbursed/repurchased contributed capital/ shares**

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<sup>2</sup> Circular 156/2013/TT-BTC.

<sup>3</sup> Point b, Clause 7 of Circular 151/2014/TT-BTC.

### ***a. Payment methods***

As there are no specific legal provisions, enterprises may choose payment methods for the value of the reimbursed/repurchased contributed capital/shares for the members/owners/shareholders according to their needs and practices.

Particularly for cases where the members/owners/shareholders are businesses, the payment must comply with the regulations in Clause 1, Article 6 of Decree No. 222/2013/NĐ-CP: *“Enterprises do not perform cash payment in transactions of capital contribution and purchase, sale, transfer of the capital parts contributed into enterprises”*.

Additionally, enterprises are required to ensure the sufficiency and legality of payment documents and evidence to avoid risks in accounting, financial management, or potential legal claims from the related members/owners/shareholders.

### ***b. Payment period***

The law is generally silent on the matter regarding the deadline for payment completion of the reimbursed/repurchased contributed capital/shares. The 2020 Law on Enterprises only acknowledges provisions related to the “repurchase period” of the company when receiving requests from the members/shareholders. Specifically:

For JSCs, they *“shall repurchase shares at the request of its shareholders at market prices or at the prices calculated in accordance with the rules in the company’s charter within 90 days from the receipt of the request. In case an agreement on the prices cannot be reached, the parties may hire a valuation organization to determine the price. The company shall introduce at least 03 valuation organizations for the shareholders to make the final decision”*<sup>4</sup>.

For LLCs, *“within 15 days from the day on which the request mentioned in Clause 1 of this Article is received, the company shall repurchase that member’s stake at market value or at a value determined in accordance with the company’s charter, unless another value is agreed upon by both parties. The payment shall only be made if the company is still able to pay its debts and other liabilities afterwards”*<sup>5</sup>.

In our interpretation, the above provisions could be understood in two ways: 1- during this period, the company must decide and respond to the members/shareholders regarding the repurchase of contributed capital/shares and related issues such as the repurchase price, payment method, and payment deadline; or 2- during this period, the company must complete the repurchase, including payment of the repurchased

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<sup>4</sup> Clause 2 Article 132 of the 2020 Law on Enterprises.

<sup>5</sup> Clause 3 Article 51 of the 2020 Law on Enterprises.

contributed capital/shares to the members/shareholders. Currently, regulations on this matter are absent, businesses may implement in either manner that is beneficial or suitable for their practices.

### *c. Capital reduction time*

Determining the time of capital reduction (or the completion time of capital reduction) is significant in establishing the deadline for fulfilling the obligation to register changes in charter capital with the business registration authority.

Clause 2 of Article 134 of the 2020 Law on Enterprises stipulates that JSCs shall register the charter capital decreases, which is equal to the total face value of repurchased shares, within 10 days from the date of completion of payment for the shares unless otherwise prescribed by securities laws. Accordingly, the time of capital reduction is determined at the moment of completing the payment for the repurchased shares.

In practice, although there is an absence of regulations to determine the time of capital reduction in other cases, companies often apply the time of payment completion of the reimbursed/repurchased contributed capital/shares or the time recorded in the company's books, accounts, reports, etc., as the completion time of capital reduction.

### *d. Payment currency*

In accordance with the principle of restricting the use of foreign currencies on the territory of Vietnam, as stipulated in Circular 32/2013/TT-NHNN, on the territory of Vietnam, except for the cases allowed to use foreign, all transactions, payments, listing, advertisements, quotations, pricing, prices in contracts, agreements other similar forms of residents and non-residents are not allowed to be conducted in foreign exchange.

In this case, the payment of reimbursed/repurchased contributed capital/shares does not fall under the category allowed for foreign currency use, therefore, it will be carried out in Vietnamese dong in the case of money payment.

## **4.4. Dossier for charter capital reduction**

Article 51 of Decree No. 01/2021/NĐ-CP sets forth certain requirements for the application of the registration of capital reduction as follows:

- The capital reduction dossier includes the following documents: (i) A notification of changes to enterprise registration information; (ii) The resolutions or decisions of the company's owner/board of management/board of shareholders on the capital reduction; (iii) A written approval given by the investment registration authority for capital contribution or purchase of shares/stakes by foreign investors/foreign-invested business entities in case procedures for registration of capital contribution or purchase of shares/stakes must be followed in accordance with the Law on Investment.

- The enterprise must make a commitment to settle all debts and other asset liabilities after capital decrease. Although the regulation does not specify, in practice, this commitment must be reflected in both internal resolutions/ decisions of the company and in the notification of changes to enterprise registration information submitted to the Business Registration Office.
- In the case a multi-member LLC reduces its charter capital through reimbursement/repurchase of the member's contributed capital, the application for decreased in charter capital must include the latest financial statements. Here, even though business laws do not have any explicit regulation, according to Point a, Clause 1, Article 15 of Decree No. 17/2012/NĐ-CP, businesses with foreign owned capital are required to audit their financial statements. Therefore, in the case of a multi-member having foreign owned capital, it is advisable to submit an audited financial statement to ensure the authenticity of the capital reduction dossier.

#### **V. Legal consequences to be considered for businesses reducing charter capital**

*Firstly*, in many cases, the reduction of charter capital could change the ownership ratio of contributed capital/shares, thereby leading to changes in the voting ratio of the members/shareholders in the company, specifically:

*a. Regarding charter capital reduction through repurchasing the contributed capital/shares of the members/shareholders (because the members/shareholders have voted against the resolution on reorganization of the company or change of shareholders' rights and obligations in the company's charter):* If a member/shareholder requests and the company repurchases their entire contributed capital/shares, they are no longer members/shareholders of the company. In this case, the charter capital of the company will be reduced by the value of the contributed capital/number of shares repurchased from the member/shareholder, and the ownership ratio of the contributed capital/shares of the remaining members/shareholders will be adjusted accordingly to the post-reduction charter capital level.

*b. Regarding charter capital reduction due to the failure of the members/shareholders on capital contribution when registering business establishment:*

A company must reduce its charter capital if:

- The members/shareholders entirely/partially fails to contribute capital as committed/pay for the shares as registered; and
- The registered capital not yet contributed/registered shares not yet paid for may not be contributed/paid for by the remaining members/shareholders in the company or new members/shareholders within 30 days after the expiration of the 90-day period from the time the company is granted the Business Registration Certificate.

Due to the disruption in the members/shareholders and the value of contributed capital/shares regardless the initial registration, the ownership ratio of contributed capital/shares of members/shareholders in the company will be adjusted accordingly based on the new charter capital, except when all members/shareholders contribute/pay for a part of the value and maintain the initial ownership ratio.

**Secondly**, in case of a JSC, after all of the repurchased shares are fully paid for, if the total assets in the company's accounting books is reduced by more than 10%, the company shall send a notification to all of its creditors within 15 days from the payment date.

**Thirdly**, from the perspective of procurement and land regulations, capital reduction could be interpreted as a decrease in the financial capacity or in the owner's equity of the enterprise. While the law does not impose specific limitations on the extent of capital reduction, enterprises must carefully consider the reduction amount to ensure that the post-reduction charter capital still meets the financial requirements for investors/contractors participating in tenders or the minimum financial capacity required by the state for land allocation/lease/purpose transfer.

**Fourthly**, in cases where capital reduction leads to the transfer of certain assets beyond the company's ownership or usage rights, the company must undertake corresponding adjustment procedures at competent state authorities as prescribed.

**Fifthly**, in cases of capital reduction where the members/owners/shareholders are foreign investors, the enterprise and/or members/owners/shareholders need to comply with corresponding investment procedures as stipulated.

## **VI. Obstacles in legal regulations related to capital reduction and practical solutions**

### **6.1. Provision on the right to decide on share repurchase of the BOD in JSCs**

According to Clause 1 Article 133 of the 2020 Law on Enterprises, *“the Board of Directors is entitled to decide repurchase of up to 10% of the total shares of each type which are sold within 12 months. Other cases of share repurchase shall be decided by the General Meeting of Shareholders”*. This means that in a JSC, either the BOD or the GMS could decide on share repurchase, depending on the ratio and value of the repurchase.

However, we found that this regulation is contradictory with other regulations in the Law on Enterprises and is impractical. Specifically, within the provisions of the 2020 Law on Enterprises, issues related to the shares, quantity of shares in, charter capital, and the operational regulations of a JSC shall fall under the decision-making authority of the GMS. Meanwhile, the redemption of shares undoubtedly leads to a reduction in charter capital, a decrease in the quantity of shares, and amendments to the company's regulations.

Moreover, under Article 51 of Decree No. 01/2021/ND-CP guiding the registration dossier for charter capital reduction of JSCs, a Resolution of the GMS on the new charter capital must be required for the application.

Therefore, in practice, in this case, we still recommend enterprises to convene a GMS or seek the opinions of shareholders to pass a resolution/decision with on reducing capital, decreasing the quantity of shares, and amending the Company's Charter. The BOD will then decide and implement the share repurchase process from the shareholders corresponding the procedures outlined in section 2.4 above.

## **6.2. Regulations on capital reduction through partial share reimbursement in JSCs**

Point a Clause 5 Article 112 of the 2020 Law on Enterprises stipulates that the charter capital decrease of a JSC *“is decided by the GMS, in which, the company will return part of the contributed capital to the shareholders in proportion to their holdings if the company has operated for at least 02 consecutive years from the enterprise registration date and is able to fully pay its debts and other liabilities after the return of capital”*.

Under the current regulations, we understand that shareholders contribute capital to a JSC by paying for the value of shares. When the payment is completed, the shares are successfully issued, and the shareholder will own the corresponding number of shares as well as the corresponding voting rights on the total voting shares in the company. Therefore, the subject of the transaction between shareholders and the company is the shares, not the contributed capital as in an LLC. For a JSC, if the capital is reimbursed, it will be considered as the JSC reimbursing the amount that the shareholders had paid when purchasing shares. The reimbursement value must correspond to the quantity of shares and the face value of the shares rather than being arbitrary.

However, apart from the mentioned regulation, there has yet any other specific provisions on the methods and procedures for a JSC to reimburse contributed capital to shareholders. Therefore, in practice, almost all JSCs prefer share repurchase as a method of charter capital reduction, rather than capital reimbursement as stipulated.

*The increase or decrease of charter capital is considered a right of enterprises and their contributors/shareholders. However, due to the relevance with the enterprises' financial capacity, the related dossier and implementation process must be comprehensive and rigorous. By this writing, ATA hopes that our clients and fellow lawyers will gain additional experience and methods for settling matters arising during the consultancy on corporate charter capital reduction procedures, ensuring the legitimate rights and avoiding potential legal risks for either themselves and their clients.*

**Abbreviation:**

<b>LLC</b>	Limited Liability Company
<b>JSC</b>	Joint Stock Company
<b>GMS</b>	General Meeting of Shareholders
<b>BOD</b>	Board of Directors
<b>BOM</b>	Board of Members
<b>PIT</b>	Personal Income Tax
<b>CIT</b>	Corporate Income Tax

## ABOUT US

ATA Global Legal Limited Company (**ATA Legal Services**) is established and operated by acknowledged and experienced lawyers. Our operational goal is to become a law firm providing flexible and comprehensive legal services to both organizations and individuals, and both local and international clients. Of which, one of our core service is in-depth corporate consultancy.

All partners, lawyers, advisors, consultants, and even paralegals of ATA Legal Services are well-trained and have years of experience in the areas they are in charge of. In particular, the partners of ATA Legal Services have all consulted for and worked with renowned economic groups, banks or securities companies such as Vingroup, FLC, DNP, Tasco, Techcombank, SHB, SHS, VPS, etc.

With a serious and professional working attitude along with the dedication of the team always trying to put ourselves in the position of clients to understand their needs and aspirations, we are committed to bringing the most effective and appropriate services for Valued Clients.

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