



**LEGAL REGULATIONS AND PRACTICAL EXPERIENCES
WHEN DETERMINING THE TERM OF
ENTERPRISES CAPITAL CONTRIBUTION/ SHARE PAYMENT**

Regarding capital increase procedure for businesses, given the fact that the contributors/ shareholders could not always proceed with the contribution immediately or at the same time, the capital contribution/ share payment period has been being a concern. Therefore, what are the legal regulations and practice regarding this matter? Let's explore with ATA Legal Services in the topic "LEGAL REGULATIONS AND PRACTICAL EXPERIENCES WHEN DETERMINING THE TERM OF ENTERPRISES CAPITAL CONTRIBUTION/ SHARE PAYMENT" as below.

1. Cases where the obligation to contribute capital/ to pay share for the enterprise arises

When wishing to become a member/ shareholder of a business, shareholders may incur financial obligations towards the enterprise (pay money to the enterprise or transfer ownership rights of assets from the member/ shareholder to the enterprise) or towards other contributing members/ shareholders (pay money to other members/ shareholders or transfer ownership rights of assets from one to other members/ shareholders) of that enterprise. Accordingly, the obligation to contribute capital/ to pay share for the enterprise arises in the following cases:

- (i) Members/ Founding shareholders contribute capital/ pay shares registered in the business establishment;
- (ii) Members/ Shareholders contribute capital/ pay shares issued in the company's capital increase;
- (iii) Investors purchasing privately issued shares of the company.

The question is, which is the legitimate timeframe for executing the capital contribution/ share payment in the aforementioned cases? Whether the enterprise could proactively decide the contribution deadline or must comply with legal regulations in all cases?

2. Is 90 days the capital contribution /share payment period when establishing a business?

According to the 2020 Law on Enterprises, the period for contributing capital/ share payment registration when establishing a business is 90 days from the issuance date of the Certificate of Enterprise Registration, excluding the time needed to transport or import the contributed assets and for completing ownership transfer procedures. However, in case the Board of Members ("BOM")/ Board of Directors ("BOD") allows, the members/ founding shareholders may continue to fulfill their capital contribution obligations within the next 30 days before the company is required to proceed with the procedures for recording the charter capital reduction to the actual contributed capital amount.

However, within the last 30 days, the BOM/ BOD has the right to redistribute the unpaid shares or the insufficiently contributed capital portion to other founding shareholders/ contributing members or new investors. In practice, however, the initial founding shareholders/ initial contributing members will be the participants in the BOD/ BOM of the enterprise, so they will always have a voice in reviewing and making decisions related to the redistribution of shares/ capital contribution. Furthermore, the founding shareholders/ initial contributing members have had prior knowledge, agreements, and commitments to each other, so changing the agreed-upon contents or allowing another investors to participate in the company will be the last option. Therefore, in principle, if the founding shareholders/ contributing members still have the need to continue share payment/ capital contribution, they will always have preferential rights.

Thus, in terms of either legality and practice, the maximum capital contribution/ share payment period when establishing a business will be within 120 days from the date the company is granted the Enterprises Registration Certificate by the competent state authority.

3. Time limit for capital contribution and share payment when the company increases its charter capital

3.1. For businesses that are not public companies¹

For regular businesses - not public companies, offering additional shares (applied for joint stock companies) or contributing additional capital (applied for limited liability companies) to increase charter capital is governed by the Enterprise Law.

Currently, in the case of a company increasing its charter capital, the law does not have specific regulations on the time limit for members/shareholders to contribute the full amount of committed capital/pay for the full number of shares registered to buy from the date of purchase. In fact, this deadline will be specified in the Company Charter or resolutions and decisions of the General Meeting of Shareholders ("General Meeting of Shareholders") or the Board of Directors in case assigned tasks by the General Meeting of Shareholders. In terms of practice, businesses often apply a payment deadline to purchase additional issued shares or a deadline to contribute additional capital to increase charter capital (which is also the deadline to implement the share offering/capital contribution) within a period of no more than 01 year from the date the resolution/decision to increase capital is approved by the General Meeting of Shareholders/Board of Directors. This is also a reasonable period of time

¹ Within the scope of this article, ATA does not mention businesses that are credit institutions, securities companies, fund management companies or businesses operating in specific fields, other than being regulated by The Law on Enterprise in general, is also governed by specialized legal documents such as the Law on Credit Institutions and the Law on Securities, which may have separate regulations related to capital contribution/share purchase during the process of establishing company or increasing charter capital.

and can be approved by the business registration agency when submitting the application to record the capital increase.

So what are the reasons why a period of no more than one (01) year is considered reasonable and approved by the competent State agency? In our opinion, this comes from the following legal and practical bases:

- (i) Legally, the Law on Enterprise requires enterprises (joint stock companies and limited liability companies with two or more members) to hold an annual General Meeting of Shareholders (“**AGM**”) and a meeting of the Board of Members (“**Board of Members**”) periodically once a year. One of the important contents in annual/periodic meetings is to review and decide on the development strategy and annual business plan of the enterprise. This is understood to mean that resolutions and decisions passed by the General Meeting of Shareholders/Board of Directors during the year related to the development and operational plans of the enterprise will have to be reported on the implementation/deployment process and considered. Evaluate to decide whether to continue implementation or cease in accordance with the actual operations of the business at that time. Resolutions/decisions on increasing charter capital are certainly documents with important content and contributions in development guidelines and orientations and are decisive for strategies and plans of the Company. In case the capital increase has been completed by the time of the annual/regular meeting, the enterprise's General Meeting of Shareholders/Board of Directors shall consider and approve decisions related to the use of new capital sources in strategies and plans. On the contrary, if at that time the capital increase has not been completed, the company's General Meeting of Shareholders/Board of Directors have to pass a new resolution/decision related to the capital increase plan and the implementation of related work. At that time, the enterprise shall self-assess the success or failure of the share offering/additional capital contribution, and must make a decision to increase capital on the basis of the share/capital payment value, make actual contributions or cancel the entire offering/capital contribution to conduct a new offering or offer to new subjects.
- (ii) In terms of practice, increasing charter capital is often aimed at implementing urgent business goals such as implementing production and business expansion plans or restructuring the business's capital and debts. Therefore, businesses will need additional capital as soon as possible.

3.2. For public companies

The Securities Law and Decree 155/2020/ND-CP guiding the Securities Law clearly stipulate the time limit for distributing offered/additional securities as follows:

*“The issuing organization must complete the distribution of securities within **90 days** from the effective date of the Certificate of registration for public offering of securities. In case the issuer cannot complete the distribution of securities to the public within this time limit, the State Securities Commission shall consider extending the distribution of securities but not exceeding **30 days**. In case of registration for multiple securities offerings, the gap between the next offering and the previous offering must not exceed **12 months**.”²*

“The issuing organization must complete the private stock offering within 90 days from the date of written approval from the State Securities Commission.”³

Accordingly, for public companies, the general time limit for distributing additional issued shares is 90 days from the date of approval by the State Securities Commission. Particularly in the case of a public offering of shares, this deadline can be extended for no more than 30 days but must be approved by the State Securities Commission.

According to the provisions of the Securities Law and Decree 155/2020/ND-CP, registration to purchase and payment for additional issued shares is one of the work items that must be completed within the securities distribution period. Therefore, it can be understood that the payment term for purchasing shares will not exceed the share distribution period - 90 days or in case of extension, 120 days of the offering.

Above are the contents about the capital contribution period of enterprises analyzed by ATA Legal Services from current legal regulations and drawn from practical experience. We hope that this article will help our customers or fellow lawyers and corporate legal officers find appropriate solutions so that the implementation of increasing the charter capital of the enterprise is both practical and practical, meets business needs while also being consistent with legal regulations and meeting the requirements of competent State agencies.

² Section 4 Article 26 of the Securities Law.

³ Clause 3 Article 48 Decree 155/2023/ND-CP guiding the Law on Securities.

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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- Hotline: 091.4645.112
 - Email: contact@ata-legal.com
 - Website: <https://ata-legal.com>
 - Address: 184 Nguyen Tuan street, Nhan Chinh ward, Thanh Xuan district, Hanoi

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