

## Capital Loss, Over-Indebtedness and the Consequences ...

### Capital Loss

*(Balance Sheet Losses only affect the Equity)*

The assets cover the liabilities and at least 50% of the equity.

Balance Sheet	
Assets	Liabilities
Assets	Liabilities <i>(Creditor's claims)</i>
	Equity (Share Capital + Reserves)
Retained Loss $\leq 50\%$ Equity	

The assets still cover the liabilities, but less than 50% of equity.

Balance Sheet	
Assets	Liabilities
Assets	Liabilities <i>(Creditor's claims)</i>
	Equity (Share Capital + Reserves)
Retained Loss $\geq 50\%$ Equity	

### Over-Indebtedness

*(Balance Sheet Losses exceed the Equity)*

The assets no longer cover the liabilities. There is no Equity left.

Balance Sheet	
Assets	Liabilities
Assets	Liabilities <i>(Creditor's claims)</i>
	Equity (Share Capital + Reserves)
Retained Loss $>100\%$ Equity	

#### Art. 725 Abs. 1 OR

Where the last annual balance sheet shows that one-half of the share capital and the legal reserves are no longer covered, the board of directors must without delay convene a general meeting and propose financial restructuring measures.

#### Art. 725 Abs. 2 OR

Where there is good cause to suspect over-indebtedness, an interim balance sheet must be drawn up and submitted to a licensed auditor for examination.<sup>2</sup> If the interim balance sheet shows that the claims of the company's creditors are not covered, whether the assets are appraised at going concern or liquidation values, the board of directors must notify the court unless certain company creditors subordinate their claims to those of all other company creditors to the extent of the capital deficit.

#### without legal consequences

- Without legal consequences

#### with legal consequences

- Convening the General Meeting of Shareholders
- Implementation of measures to restructure the Balance Sheet
- Have interim financial statements prepared at going concern and liquidation values
- Ask the shareholders for additional capital
- Ask for subordination of claims from the creditors
  - if not sufficient: notify the court