**RECEIVING THE CAPITAL INVESTMENT IN THE FORM OF CONVERTING LOANS INTO SHARES**

Receiving the capital investment by converting loans into shares is very common in Vietnam. In this way, the Investor can have more time to assess whether the business operations of the Target Company are positive and whether the investment is profitable. After that, the Investor can decide to convert a part or all of their loans into shares under the ratio agreed upon by the parties or withdraw all of their loans to protect their investment.

To conduct these transactions, the parties usually enter into Loan Agreements with terms more sophisticated than other ordinary loan ones. For instance, these Loan Agreements often require the Target Company to satisfy certain conditions before receiving the loan and ensure the Investor’s right to decide which way of the loan conversion.

Some notes for the Target Company when receiving a converting loan into shares are as follows:

1. **The loan amount and the conversion ratio**

Depending on the capital need and the business plan of the Target Company, the parties will negotiate and agree on the loan amount and disbursement schedule. In particular, the loan amount will directly affect the share ownership ratio in the Target Company if the Investor decides to convert the loan into shares. The Investor will have the right to vote in the General Meeting of Shareholders and to pass important decisions of the Target Company per the ownership ratio.

Investors and Target Companies can refer to the legal issues that should be of concern when it comes to convertible loans in [this article](https://apolatlegal.com/articles/legal-issues-to-be-noted-when-converting-loans-into-contributed-capital.html).

1. **Condition Precedents for receiving loans**

Once the result of due diligence is available, the Investor can decide which conditions must be met by the Target Company before receiving a part or all of the loan. These conditions are commonly referred to as the Condition Precedents. Some notable conditions are as follows:

* Sufficiently provide the Minutes of meeting and Decisions of the General Meeting of Shareholders on receiving convertible loans into shares;
* Sufficiently provide the Minutes of meeting and Decisions of the General Meeting of Shareholders on the appointment of one or several persons by the Investor as members of the Board of Management or Inspectors;
* The Target Company must complete its tax finalization from its establishment period to the most recent month;
* The Target Company must apply for permits and certificates to legally operate as required by law;
* The existing Shareholders undertake not to transfer their shares to other investors without the Investor's approval, etc.
1. **The decision to convert or repay the loan**

During the loan term, if the Investor realizes the growth potential of the Target Company and its benefits to the Investor’s investment, the Investor will decide to convert a part or all of the loan into shares and own a certain percentage of the Target Company. Depending on the conversion method and the Investor's nationality, the Target Company will have to carry out certain administrative procedures in accordance with the law.

At the expiry of the loan term, subject to the Loan Agreement, the Investor has the right to decide not to convert the loan into shares and request the Target Company to repay the entire loan along with a pre-determined interest rate (if any). There are many reasons for the Investor to suspend their ongoing investment, such as inefficient business operations leading to low return; key personnel failing to comply with the commitment of working hours; the Target Company failing to fulfill important commitments, etc

1. **Binding the involvement of key personnel**

The Company’s operation effectiveness often depends on some key personnel, such as the General Director, the Technical Director, etc. They are usually also the existing shareholders of the Target Company. In order to maintain the growth potential of the Target Company, the Investor usually requires these key personnel to work at the Target Company for 3-5 years after receiving the loan, and if they are also the existing shareholders of the Company, they may also be prohibited from transferring their shares for 3-5 years as well.

1. **Foreign loans (if any)**

In case the Investor is a foreign individual or organization, the Target Company needs to pay attention to the following points:

* Register the loan at the State Bank if the term load is from 12 months to more (i.e., the medium and long-term loans). In addition, The Target Company must periodically report to the State Bank of its foreign loans, including short, medium and long-term loans.
* The Target Company shall receive the loan into a foreign currency loan bank account or a direct investment capital bank account (if it is a foreign-invested company that meets the statutory requirements).

The above are some legal issues related to investment in the form of converting loans into shares. However, the nature of the transaction can vary depending on the Investor's request and the parties' agreement, leading to the above statements being inappropriate. Therefore, in the course of negotiating an investment agreement and conducting the conversion, the Investor and the Target Company should consult with lawyers expertizing in this field.