RUSSIAN ANALOGUE OF THE LEGAL STRUCTURE OF A CONVERTIBLE LOAN

INTRODUCTION

Active harmonization of Russian corporate law with the best foreign practices and the appearance of local analogues of well-known foreign legal structures (institutions and instruments) therein designed to provide convenience and increase the attractiveness of investments in Russian companies are recognized as its sustainable development trends in current conditions (GUTNIKOV, 2020). Thus, in 2008-2009, based on a study of the experience of developed foreign countries (KULMS, 2001; CHEMLA et al., 2004), the Russian legislator institutionalized shareholder agreements (and agreements on the exercise of the Limited Liability Company (LLC) shareholders’ rights). In 2015, owing to the adaptation of the indemnity institutions that appeared long ago and are widely used abroad (DANIELS, 1974; PENGELLEY, 2008; COURTNEY, 2001), warranties and representations (ADAMS, 2005; WAND, 2013; GILI SALDAÑA, 2010), enriched the Civil Code of the Russian Federation with mechanisms of compensation for losses and assurances of circumstances that are popular in corporate relations (including those related to the emergence and redistribution of corporate control).

The structure of a convertible loan was a variation in the interaction of venture investors and entrepreneurs, which for a long time did not find a place in Russian corporate law, despite the wishes of start-up organizers, venture investors and the business community as a whole. The convertible loan is a model of external debt financing of a corporation (private joint stock company (JSC) or LLC ), which begins the implementation of a commercial project, with a condition guaranteed by special legal means that by a certain date, at the discretion of the lender, this corporation will either return the loan with the agreed interest or transfer a commensurate share of corporate participation in the borrower’s capital (JSC shares or shares in the LLC’s registered equity capital) to the lender.

With the adoption of Federal Law No. 354-FZ of July 2, 2021 “On Amendments to Certain Legislative Acts of the Russian Federation”, which entered into force on July 13, 2021 (hereinafter - Law No. 354-FZ), clear regulatory conditions appeared for constructing venture investment deals with the provision of converting the debt obligation into the equity capital of Russian private business corporations (JSC or LLC). The Russian legislator not only legalized the term convertible loan, but applied an integrated approach to the formation of the structure under consideration, providing for the necessary amendments in the legislation on JSC, LLC, and (in relevant aspects) legislation on notaries and the securities market, without forgetting to adjust the regulatory procedure for entering information into the unified state register of legal entities. This legislative innovation requires a prompt doctrinal assessment, including verification of legal consistency, completeness and compliance with the goals of convenience, simplicity and effectiveness of the practical application of the new Russian analogue of the legal structure of a convertible loan.

LITERATURE REVIEW

Traditional civil law mechanisms for attracting investments are related to deferred direct participation in corporate capital (issuance of preferred shares, bonds convertible into shares, debt financing with collateral encumbrance of the share capital, conclusion of an agreement on granting an option to conclude a stake (shares) acquisition agreement, registration the borrower’s obligations to make a corporate decision to increase the equity capital by a corporate agreement, etc.), and associated with the need to evaluate the company and coerce into making future corporate decisions. They are also linked with significant expenditures to overcome bureaucratic and control procedures for venture projects at the initial (or one of the early) stages of development. These mechanisms turn out to be overly complex and (or)
unnecessarily expensive and (or) unacceptably risky (TAULLI, 2012).

At the same time, if we are talking about the fact that existing shares (stakes) are the subject of an agreement between the corporation (investment recipient) and the investor, the very possibility of postponing the question of the investor’s entry into the corporation as a shareholder is limited by a closed regulatory list of cases and strict deadlines for the corporation’s share possession in its own registered equity capital (clause 1 of Article 34, Articles 72 and 75 of the Federal Law of December 26, 1995 No. 208-FZ “On Joint Stock Companies”, hereinafter referred to as the JSC Act; Articles 23 and 24 of the Federal Law of February 08, 1998 No. 14-FZ “On Limited Liability Companies”, hereinafter - the LLC Act). Thereby, in the absence of special regulation (until the entry into force of Law No. 354-FZ), the fact of legal recognition of the contractual freedom principle in Russia (as is correctly noted in the literature, formally an agreement on the provision of an interest-bearing loan with the debtor’s obligation to issue a certain number of shares and transfer them to the lender as repayment of the loan upon the creditor’s demand under certain circumstances does not contradict Russian law (LURIE AND MELIKHOV, 2014)), and the existence of legal and conventional but still “bypass” civil law structures, with the help of which the investor’s debt monetary claim could have been secured in advance by the future transformation into a corporate share, prevented recognizing the model of a convertible loan as actually applicable for Russia (ZAKHARKINA AND KUZNETSOVA, 2019a).

Practicing lawyers rightly noted that the lack of the possibility of “automatic” decision-making by the corporation’s competent body (general meeting of shareholders, board of directors), given the unformed and not formally expressed will of the latter was the most serious obstacle to the use of the convertible loan model in the Russian legal field. Accordingly, since the issue of equity securities (shares) and their distribution by private subscription, equally as an increase in the LLC equity capital, is a complex and multi-stage legal mechanism that cannot be implemented without a number of the company’s volitions expressed in documents signed by shareholders, the board of directors, the executive body, and sometimes by the company’s employees; therefore, in the absence of such volitions, the creditor by his own will alone will not be able to convert the debt into a certain number of shares in JSC or LLC (MOLOTNIKOV and YANKOVSKY, 2015).

This difficulty could be overcome through the so-called will-substituting or at least will-amending judicial decision, recognized in some foreign jurisdictions (BORODKIN, 2015; ODA, 2010). However, Russian doctrine and judicial practice gives a clear answer “no” to the question whether shareholders can be forced to vote in a certain way, since a different approach would speak of a court intrusion into corporate governance (LAPTEV, 2020), assuming the possibility of judicial consideration of cases, related to compelling the company to amend the corporate constituent documents (including changes in the amount of the equity capital) by law is not provided (Definition of the Supreme Arbitration Court of the Russian Federation dated August 20, 2008 No. 10678/08).

Although it is believed that the mechanisms of venture capital investments at the earlier stages of a project are not as well studied as at later stages (JENG and WELLS, 1998), foreign scientific studies have identified such positive characteristics of convertible loans as simplicity, convenience and clarity of structure. Since business valuation is not performed, part of the negotiations can be avoided, and as we are talking about the debt right of claim rather than participation in capital, the investor has little corporate powers, if any; in general, a transaction can be made with much fewer documents and costs. Convertible loans are also characterized by their ability to legally ensure guaranteed opportunity for the investor to initiate and control the conversion process without additional contractual or administrative mechanisms (FELD and MENDELSON, 2016), and consistently allocate cash flow rights, voting rights, management rights, liquidation rights and other control rights, as is typical for venture capital funding (KAPLAN and STROMBERG, 2000).

In the context of complicated assessing project prospects at the early stages of financing, the advantage of convertible loans was also shown in the fact that the announcement of the issue of convertible bonds positively influences the share price (LEWIS et al., 1996). It was noted that
convertible loans help entrepreneurs, business angels and venture investors avoid dilution, improve the internal rate of return of venture capital, and assist venture investors in monitoring entrepreneurs (IBRAHIM, 2009). It has also been established that convertible loan has an advantage over a simple mixture of debt and equity capital, when in the case of organizing venture financing based on a convertible loan agreement, the entrepreneur (recipient of financing) has more incentives not to engage in signal manipulation (‘show off’ or brevity), i.e., he will not strive to positively evaluate the short-term results of the project to reduce the likelihood of project liquidation (CORNELLI and YOSHA, 1997).

It seems that the conclusion about one of the reasons for the prevalence of using convertible securities in venture capital financing is applicable to the contractual structure of convertible loan. It implies that convertible securities can be used for endogenous distribution of rights to cash flows depending on the achieved quality of the financed project, which mitigates the problem of a moral conflict between the entrepreneur and the venture investor and encourages both parties to develop the project effectively (SCHMIDT, 2001). There is a good chance that financing start-ups using a convertible loan structure may help not to miss such an important source of capital as an asset-based loan, enabling to correlate the amount and interest rate on a loan with the current results of the project (SHADAB, 2014).

All these facts explain the popularity of the considered instrument in the field of financing start-ups and venture investment abroad and convinces of the correctness of the Russian legislator’s actions on its reception. It is noteworthy in this aspect that such borrowing of foreign analogs of any individual structures or entire institutions, a kind of “legal transplantation” (Watson, 1993), is nothing unusual in the lawmaking of many states, and it is rightly considered one of the natural methods of developing civilist thoughts (KRASSOV, 2013).

In Russian realities, the entry into force of Law No. 354-FZ shifted the focus of scientific discussion from clarifying and better arguing the advantages of the legal structure of a convertible loan, justifying its greatest suitability for financing investment venture capital projects at the early stages of implementation and searching for options for legal support for the transformation of liability rights into corporate ones (ZAKHARKINA and KUZNETSOVA, 2019b) to the question of how well the rule-making solution has been worked out, which distinguishes the Russian analogue of the structure under consideration from what foreign investors are used to employ.

MATERIALS AND METHODS

Purposeful and consistent harmonization of Russian corporate legislation with the best foreign practices predetermined the application of the comparative jurisprudence method and the study of legal, financial and economic publications of foreign authors. A distinctive feature of the methodological framework of the research was the departure of the economic analysis of law, which is actively used in foreign studies, and an attempt to assess the new legal structure, to a greater extent, applying the methods of analysis and synthesis, induction and deduction, comparison and generalization, analogy and legal modeling that are characteristic of civilist doctrinal research.

The regulatory legal framework of the study was made up of the provisions of the Federal Law of July 2, 2021, No. 354-FZ “On Amending Certain Legislative Acts of the Russian Federation” that entered into force on July 13, 2021, and special norms on convertible loans amended by this legislative act, which are contained in the updated versions of Federal Laws dated December 26, 1995 No. 208-FZ “On Joint Stock Companies”, dated February 08, 1998 No. 14-FZ “On Limited Liability Companies”, dated April 22, 1996 No. 39-FZ “On the Securities Market”, dated August 08, 2001 No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs”, and in the current version of the Fundamental Principles of the Legislation of the Russian Federation on notaries dated February 11, 1993 No. 4462-1.

RESEARCH RESULTS

An analysis of the newest Russian structure of a convertible loan compared to other venture investment instruments has shown, from a theoretical and practical standpoint, its significant advantages and benefits caused by a) sufficient corporate sophistication (precision and clarity of rule-making decisions); b) simplicity and low cost (no need for significant costs for legal
preparation and passing state control measures); c) the introduction of a mechanism for automatic implementation (entirely independent on the will of the recipient of investments), capable of ensuring demand for it in business engineering.

The civil law nature of a convertible loan agreement under Russian law has been determined: this agreement is not distinguished as an independent contractual type (along with loan and credit agreements), but is a subtype of a loan agreement that causes an alternative loan obligation, in which the debtor (borrower) under the choice of the loaner (lender) is obliged to do one of two actions (return the loan amount with accrued interest or provide a share of own corporate capital, i.e., convert the loan).

A sufficient balance of the regulatory mechanism of a convertible loan has been noted, it is able to adequately ensure account for property interests as an investor - a lender who acquires a guaranteed right (secured by the available automatic execution mechanism) to choose an alternative performance under an agreement, and as an investment recipient - a borrower who does not lose the ability to control terms and the circumstances necessary to convert loan into equity and counter attempts of the lender’s misconduct. The potential attractiveness of the Russian analogue of the legal structure of a convertible loan has been established not only for domestic, but also for foreign venture capitalists aimed at investing in the Russian economy.

DISCUSSION

On the admissibility of the equity capital payment by offsetting counterclaims to JSC and LLC

First of all, it should be stipulated that, starting since 2009, Russian corporate legislation has noticeably softened in terms of the requirements for the procedure for LLC equity capital payment upon its increase and payment for JSC shares placed in addition to the existing ones. Federal Law No. 352-FZ of December 27, 2009 canceled the previously existing imperative prohibition to use in these cases the mechanism for offsetting the corporation’s claims to the shareholder to pay for the share (shares) with the shareholder’s counterpart homogeneous claims to repay the debt (including loan) obligation.

On the one hand, this novelty was positively perceived by the business community as paving the way for the use of the well-known foreign instrument debt-to-equity swap, which allows restructuring the corporation’s debts and owing to manipulations with corporate capital, effectively heal it, and restore signs of solvency (ZHAVORONKOV and BROOK, 2010; BODRYAGINA, 2010).

On the other hand, since excessive rigidity of the rules on registered (equity) capital increases transaction costs and hinders investment (Wei, 2014), and, in general, corporate law shall promote investment in corporate capital and ensure investment-related corporate control as its most important tasks (HANSMANN and KRAAKMAN, 2004), the resolution of the material content of the registered equity capital by offsetting the claims against the company is a serious advance in the mainstream of the general trend noted in science of the transition from a strict legal regime of capital to a more liberal and flexible regime (CHEN, 2015 ). As applicable to the issue under consideration, the most important thing is that the revision of the rule on the inadmissibility of equity capital payment by offset should be regarded as the first clearly necessary step towards the formation of a convertible loan structure.

On the convertible loan agreement by JSC and LLC

Law No. 354-FZ introduced a new article 32.3 into the text of the JSC Act, wherein it presented a legal definition of a convertible loan agreement as a loan agreement providing for the lender’s right to require the borrower, who is a private company, to place additional shares of a certain category (type) to the lender, instead of returning all or part of the loan amount and paying all or part of the interest for using the loan at maturity and (or) other circumstances provided for by this agreement.

It follows from this definition that a convertible loan agreement is not an independent contractual type (and does not require adjusting the provisions of Chapter 42 of the Civil Code of the Russian Federation on loans and credits). It acts as a special kind of an ordinary loan agreement with the so-called “flickering (indeterminate) causa” admissible by virtue of the
contractual freedom, when, under certain conditions, the object of the repayable granting may differ from the objects issued as a loan (KARAPETOV, 2019). In fact, this refers to a loan obligation, constructed and subject to performance under the general provisions on alternative obligations enshrined in Article 308.1 of the Civil Code of the Russian Federation: the debtor is obliged to perform one of two or more actions (refrain from performing actions), the choice between which belongs to the debtor, if the law, other legal acts or the agreement do not grant the creditor or a third party the right to choose (as applicable to a convertible loan, the law precisely attaches the appropriate right of choice for the lender). This consideration allows us to argue that the clarification of the Plenum of the Supreme Court of the Russian Federation is applicable to convertible loans. It states that when choosing one of the alternative obligations, the obligation ceases to be alternative and it is considered to have consisted of the selected action from the moment it arose, while the person who made the choice is not entitled to unilaterally amend it (clause 43 of the Resolution of November 22, 2016 No. 54 “On some issues of the application of general provisions of the Civil Code of the Russian Federation on obligations and their performance”).

Apparently, the peculiarity of the subject composition of the studied type of loan agreement is that the corporation itself, rather than its shareholder, acts as the borrower thereunder. Agreements on the provision of a loan for the needs of the company to its shareholder with the obligation of the latter, at the choice of the lender, to alienate the shares of the company owned by the borrower, instead of refunding the money. However, in such cases it will refer to the exchange of debt for existing shares that belong to the borrower rather than converting the loan into future shares.

Contrary to the tendency to generalize a number of similar (up to identical) rules on JSC and LLC at the level of general provisions of the Civil Code of the Russian Federation on commercial business corporations, the legislator presented a definition of a convertible loan agreement for LLC, separating it from JCS, in clause 1 of the new Article 19.1 of the LLC Act. It is understood as an agreement that provides for the right of the lender to demand the company (debtor) to increase its equity capital and (if the lender is a shareholder of this LLC) increase the nominal value and size of the lender’s share with a simultaneous decrease in the size of other shareholders’ shares, or (if the lender is a third party) accept the lender into the LLC shareholders’ membership, endowing the lender with shares in the equity capital with a simultaneous reduction in the size of other shareholders’ shares, instead of returning all or part of the loan amount and paying all or part of the interest on the loan upon maturity and (or) other circumstances provided for in this agreement. It is obvious that a separate wording for LLCs was required to take into account the technical features of the mechanism for increasing the equity capital: the charters of specific LLCs as to the uttermost private and closed corporations can prohibit the admission of third parties to the company, while an increase in the equity capital of an LLC is not associated with the issue of additional securities (shares). In case of ignoring these technical nuances, the legal nature of convertible loan agreements concluded by JSC and LLC is the same: upon maturity and (or) under other circumstances stipulated by the agreement, the lender, against the will of the borrower, has the right to receive a share of corporate participation in the borrower’s capital instead of repaying the loan (part thereof or interest accrued on the loan amount).

Unlike the new rules of Article 32.2 of the JSC Act, which do not impose special requirements on the form of a convertible loan agreement (which means the action of the general requirement of Article 161 of the Civil Code of the Russian Federation for the simple written form of transactions concluded by legal entities), the norm of clause 3 of the new Article 19.1 of the LLC Act focuses on the need to draw up a convertible loan agreement exclusively in writing by drawing up one document signed by the parties and mandatory notarization thereof. However, this requirement should not be considered a specific feature of convertible loan agreements entered into by LLCs, since in general, a notarial form is required for most manipulations with shares in the equity capital of an LLC.

According to clause 2 of the new Article 32.3 of the JSC Act, the substantive difference between a convertible loan entered in by JSC is determined by the need for the parties, in addition to the conditions that are essential for the loan agreement under the Civil Code of the Russian Federation, to provide without fail:
1) the deadline and (or) other circumstances, upon the occurrence of which the lender has the right to demand the placement of the borrower's additional shares for himself (the legislator explained that such circumstances may include, among other things, the performance or non-performance of certain actions by the parties to this agreement or by third parties (conclusion of certain transactions, attracting new investors, etc.), making certain decisions by the borrower or third parties, achieving the established financial or production indicators by the borrower);

2) price of placing additional shares in pursuance of a convertible loan agreement or (which is especially important for difficult to assess commercial projects at the early stages of investment) the procedure for determining it (the law specifies that the procedure for determining the price of additional shares may depend on future circumstances that did not occur at the time of concluding convertible loan agreement).

Similarly, the substantive difference from the classic loan agreement is defined in clause 4 of the new Article 19.1 of the LLC Act for a convertible loan agreement entered into by an LLC. Mandatory conditions thereof must include:

1) the deadline and (or) circumstances, upon the occurrence of which the lender has the right to submit a demand to increase the borrower's equity capital (the legislator’s explanations about what can serve as such obligations repeat verbatim the wording of clause 2 of the new Article 32.3 of the JSC Act);

2) the amount or procedure for determining this amount by which the nominal value of the lender's share increases (as a percentage of the value of the additional contribution made by him) if the lender is one of the LLC shareholders, and the par value or the procedure for determining the par value of the share acquired by the lender in the LLC equity capital, as a percentage of the value of the contribution made by him (in fact, this refers to an analogue of the price of additionally placed JSC shares in relation to the amount of the provided convertible loan).

The conclusion of convertible loan agreements (their amendment and cession of the lender’s rights thereunder) must be preceded by the prior consent of the highest corporate body – the General meeting of shareholders, which must be unanimously expressed by all shareholders through making a decision to increase the company’s equity capital (clauses 10-12 of Article 19.1. of the LLC Act; clauses 6 - 8 of Article 32.2. of the JSC Act). This provision is of particular importance in the new rules on the conclusion of such agreements by JSC and LLC. The corporate will of the borrower's shareholders expressed beforehand forms the basis for the subsequent automatic (upon the occurrence of the terms, conditions and circumstances established by the agreement) conversion of the loan based on the unilateral expression of the lender's will, and therefore failure to comply with this requirement entails the possibility for the company itself or its individual shareholders to litigate the concluded agreement.

On the grounds that the conclusion of a convertible loan agreement can subsequently, without additional declarations of the borrower’s will, entail essential modifications in its corporate structure, the legislator has provided for the inclusion of information about the fact of the conclusion of a convertible loan agreement by the JSC or LLC into the Unified State Register of Legal Entities to protect the interests of bona fide shareholders of commercial turnover (company counterparties, other potential investors and shareholders). The application required for this must be sent to the registering authority by the notary who certified the agreement with the LLC participation, or, accordingly, the holder of the JSC shareholders’ register, who received documents on state registration of the additional issue of shares to be converted (clause 5 of article 19.1 of the LLC Act, clause 4 of Article 27.5-9 of the Federal Law of April 22, 1996 No. 39-FZ “On the Securities Market” (as amended by Law No. 354-FZ), subclause I.3 of clause 1, Article 5, the Federal Law of August 08, 2001 No. 129-FZ “On State Registration of Legal Entities and Individual Entrepreneurs” (as amended by Law No. 354-FZ)).
On the mechanism for converting a loan into shares in the LLC equity capital (JSC shares)

A mechanism launched by the agreement of the parties that ensures the automatic provision of the borrower’s shares to the lender who had made the investment choice is a particular contractual structure specially created by the legislator. This structure is attached to the classic civil law contract and serves the latter (MALEINA, 2021), in this case - the loan agreement, to organize the conversion of the borrower’s debt into corporate capital.

This mechanism for convertible loans is defined in the new provisions of the LLC Act (clauses 6, 15-20 of Article 19.1.), the JSC Act (clause 3 of Article 32.3.), the Law on the Securities Market (clauses 6-10 of Article 27.5 -9) and the Fundamental Principles of the Legislation of the Russian Federation on Notaries dated February 11, 1993 No. 4462-1 (Article 103.13, enacted by Law No. 354-FZ) for LLC and JSC uniformly, as a whole, but with regard to the difference in the specific personality of an independent authorized entity that sets this mechanism in motion (as applicable to LLC, the above refers to a notary who has certified a convertible loan agreement; for JSC a professional participant in the securities market – a registrar maintaining the register of JSC shares acts as such an entity). The conversion mechanism can be decomposed into stages:

The 1st stage (the lender’s request for conversion).
Upon the occurrence of the terms and (or) conditions specified by the agreement, under which the lender gets the right to choose the conversion of the loan amount instead of refunding it, within three months (this period can be amended by the agreement only downward) the lender submits a written request to increase the borrower’s equity capital (to place additional shares). This request is presented to the notary (if the borrower is an LLC) and, accordingly, to the registrar (if the borrower is a JSC).

The 2nd stage (notification of the borrower about the lender’s request).
Not later than within one business day from the receipt of the lender’s request for conversion, the notary (registrar) shall notify the borrower of the content of this request.

The 3rd stage (the borrower’s objections)
Within fourteen working days from the receipt of the lender’s request for conversion from the notary (registrar), the borrower shall send his objections to the increase in the equity capital (placement of additional shares) to the notary (registrar) in pursuance of the convertible loan agreement, if such objections arise.

The 4th stage (conversion)
4.1. In the absence of objections from the borrower, at the 3rd stage, the notary (if the borrower is an LLC) submits an application to the registering authority concerning an increase in the equity capital of this LLC, acquisition (increase in the par value and size) of the lender’s share in the equity capital of the LLC and a corresponding decrease in the size of other shareholders’ shares. This application is the basis for state registration of the relevant amendments introduced into the LLC charter and to the Unified State Register of Legal Entities. If the borrower is a JSC, in the absence of his objections to the lender's request at stage 3, the registrar independently conducts an operation related to the placement of additional JSC shares by the borrower in the shareholder register of this JSC in pursuance of a convertible loan agreement.

4.2. If there are objections from the borrower at the 3rd stage, automatic conversion is not performed, and the lender, whom the notary (or, accordingly, the registrar) notified of these objections and their content, acquires the right to demand an increase in the borrower’s equity capital (placement of additional shares) by litigation. The court decision obliging the LLC to increase its equity capital (obliging a private JSC to place the shares to the lender) is the ground for state registration of the relevant amendments introduced into the LLC charter, in the Unified State Register of Legal Entities (the ground for the registrar to conduct the operation of placing the borrower’s shares).
CONCLUSION
The conducted research allows us to draw a number of conclusions regarding the essence, characteristics and prospects of applying the well-known and quite widespread abroad legal structure of a convertible loan within the framework of the Russian jurisdiction.

Firstly, the legal entrenchment of the Russian analogue of the legal structure of a convertible loan did not come as a surprise, but was an adequate response of the legislator to the real needs of the business community, corresponding to the regulatory framework development vector to stimulate the innovative development of the Russian economy (including the introduction of financing instruments for innovative projects and venture capital funding), which was determined by the Decree of the President of the Russian Federation dated May 13, 2017 No. 208 “On the Strategy of Economic Security of the Russian Federation for the Period until 2030”.

Secondly, having perceived the positive aspects of foreign experience in the practical application of convertible loans, as applicable to Russian realities, the domestic legislator freed this structure from the main drawback, which is legal limitation (insufficient legal guarantee), and therefore excessive rikiness (PROSYUROV and TATARINOVA, 2020). In other words, the entities that decided to interact in the Russian jurisdiction according to the model of convertible debt financing have acquired clear governmental legislative guarantees. As a result of targeted amendments in the legislation concerning JSC and LLC, notary and securities market, the two most demanded and popular in Russia organizational and legal forms of commercial corporations (JSC and LLC) received the required legal platform, on the basis of which entrepreneurs represented by such corporations will be able to promptly and mutually beneficially negotiate convertible loan financing for venture projects and startups with investors, including foreign venture capitalists and business angels who are accustomed to using similar mechanisms in foreign jurisdictions.

Thirdly, the new contractual and legal instrument fit into the existing civil structures, which deserves a high positive assessment. The legal and technical solution by the Russian legislator to the problem of transforming obligatory requirements into corporate powers did not require fundamental changes, entailing intrusion neither into general provisions on obligations and agreements, nor into special rules on loan agreements, and the organizational and legal form of JSC and LLC. The refusal to use the concept of a voluntary decision can be called successful. This concept is considered by Russian courts dubious: the court decision provided for by the new rules as a basis for conversion does not replace the borrower’s will but confirms the fact that the deadlines have come and (or) the terms determining the lender’s right to conversion are observed.

Fourth, if we consider the introduction of a convertible loan into the Russian legal field as a continuation of the reform of Russian liability law, aimed at ensuring pragmatic legal impact and, at the same time, at achieving harmony in the property interests of the creditor and debtor counterparties on the path of cooperation and mutual good faith (GOLUBTSOV, 2018), from this perspective the considered legislative innovations look quite balanced.

At the same time, some exception, not explained by the legislator, is that the legalized structure of a convertible loan is formally intended for investment in projects implemented exclusively through the corporate forms of LLC and JSC. This exception is hardly a matter of principle. Therefore, it is quite not implausible that with the successful practical testing of a new structure of convertible debt financing in JSC and LLC projects, the positive experience can be legislatively extended to similar relations when financing businesses carried out in the form of production cooperatives, commercial and other partnerships.

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Resumo

O objetivo da pesquisa é dar uma descrição civil-legal e avaliar as perspectivas para a aplicação prática de um elemento da infraestrutura jurídica de financiamento de risco que é novo para as realidades russas. Os métodos de pesquisa são apresentados por ferramentas técnicas e jurídicas especiais, e por meios lógicos de análise e síntese, indução e dedução, comparação e generalização, analogia e modelagem jurídica, característica da pesquisa doutrinária civilista. Os resultados da pesquisa incluem a natureza civil estabelecida da estrutura russa de um empréstimo conversível, as condições principais identificadas e os estágios-chave do mecanismo de conversão, a pesquisa também confirmou sua conveniência e eficiência. A importância da pesquisa se manifesta em sua capacidade de fortalecer a base doutrinária da atividade econômica multivariada legalmente permitida, promover a aceleração da integração de empréstimos conversíveis no campo jurídico russo, ajudar a intensificar o investimento em capital de risco doméstico e aumentar a atratividade da jurisdição russa para investidores estrangeiros.

Palavras-chave: Analogia. Contrato de empréstimo. Empréstimo conversível. Investimento em risco. Compromisso alternativo.

Palabras-clave: Analogía. Contrato de préstamo. Préstamo convertible. Inversión de riesgo. Compromiso alternativo.