



Conversion of creditor claims into capital

Creditors of companies under distress with a turnover above €1,000,000 are now allowed to convert their claims into share capital.

The recently enacted Law 7/2018 allows creditors to convert into share capital their senior credits over commercial companies with head-office in Portugal.

The following companies may benefit from this scheme:

- Companies with a turnover above €1,000,000;
- State owned companies previously authorized by the Minister of Finance.

Insurance companies, credit institutions, financial companies, investment companies and listed companies are excluded.

The conversion of claims into capital depends on the proposal of creditors whose claims represent two-thirds of the company's liabilities or the majority of senior claims.

For such proposal to be possible, the equity (*capitais próprios*) of the company must be lower than the share capital and at least 10% of the senior claims (or 25%, if senior loans) must be in default for more than 90 days.

The proposal for the conversion of claims into capital must be accompanied by a report prepared by a chartered accountant and a document containing the proposed share capital increase. The share capital increase may be preceded by a share capital reduction to cover accumulated losses.

After the conversion, the equity of the company must exceed the value of its share capital.

Shareholders will have a pre-emption rights in the subscription of the share capital increase and the shareholders who exercise it may subscribe and pay for the shares that would belong to the shareholders who choose not to exercise the right, in proportion to their respective shares.

The conversion must be approved by the shareholders in a shareholders meeting within 60 days from the proposal's notice to the company. If the shareholders meeting is not held or the proposal is rejected, the creditors may obtain a judicial order from the relevant court replacing the shareholders meeting resolution on the conversion of claims into capital.

Before the judicial order is issued, any creditor is entitled to submit a proof of claim and request the conversion of its claims into capital.

After the judicial order is issued, the shareholders will be entitled to acquire the new shares by their nominal value, provided that they pay the remaining claims held by the creditors that proposed the conversion.

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