

When the repayment amount of a long-term loan or foreign loan is converted into capital, can this be directly set off without going through stock subscription payment?

Every month, Invest Korea provides answers to some frequently asked questions submitted by foreign-invested companies in Korea and potential investors.

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A.

Even without the amount of redemption of loans or loans from foreign countries (Article 2(1)8(f) of the Foreign Investment Promotion Act), the loan claim can be converted into capital by set-off in accordance with the interpretations of the Ministry of Trade, Industry and Energy.

- Prior to the 2012 amendment to the Commercial Act, a foreign-invested company was required to use the amount of principal repayment to pay for the shares acquired in accordance with the principle of capital adequacy or to invest in kind the amount of loan and notify it as foreign investment on the condition that the investment in kind obtained court approval, in accordance with the authoritative interpretations by the Ministry of Trade, Industry and Energy.
- However, with the amendment of the Commercial Act in 2012, the regulations on investment in kind were eased (Article 334 prescribing that a shareholder cannot assert set-off against the company in regard to payment was deleted). Consequently, investment in kind can now be notified as foreign investment without court approval on investment in kind as long as there is an agreement (contract) on the debt-equity swap between the foreigner (foreign investor) and the domestic company and there is consent from both parties on the set-off. When the capital increase is registered with a court, an application for foreign-invested company registration (change of information) should be submitted.

If you have further questions please contact



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