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Valuation of Bank loans as substitution of equity

IBG Meeting Budapest, April 2015

Applicable Statute

Shareholder loans and comparable payments by shareholders are to be considered as replacing equity if they had been granted or left to the company in crisis.

Definition of **“Shareholder”** in the sense of the Austrian Equity Substitution Code (Eigenkapitalersatz-Gesetz, EKEG)

- A Shareholder with a controlling influence
- A Shareholder with a share of at least 25%
- Someone who is not a Shareholder but can exert a controlling influence on the company similar to a Shareholder

“Controlling Influence”

- Comprehensive right of objection
- Influence on the Appointment and dismissal of managing directors

Exceptions

- Cash credits are not included if it is not provided for more than 60 days
- Other credits are not included if they are not provided for more than 6 months
- Deferment of payment or Extention of the repayment period for credits that have been granted before the crisis

Legal Consequences

- Payoff block until the company is rehabilitated
- In case of insolvency the credit can only be asserted as a subordinate claim to other insolvency claims
- If payment to the shareholder takes place, he is obliged to refund

Equity replacing shareholder collaterals

A shareholder has granted securities at a time at which the granting of a credit would be regarded as equity substituting

Legal Consequences in case of insolvency

- The third party is entitled or deduct her claims from the guarantee
- The shareholder has no legal recourse against the company
- The company may require payment from the shareholder
- If payment to the shareholder takes place, he is obliged to refund

- Repayment Entitlements of the company becomes time-barred after 5 years from satisfaction