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THE SIGNIFICANCE OF HYBRID FINANCING OF ENTREPRENEURIAL ACTIVITY AND MODELS FOR ITS LEGAL REGULATION

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Abstract

In the rapidly developing contemporary business landscape, improving financing procedures and expanding alternative funding methods for entrepreneurial activity is of paramount importance. Every financing method that provides capital to an enterprise has its own specific features. Traditional methods such as credit, leasing, and factoring have already demonstrated their shortcomings in global practice. The heavy burden of interest or excessive formalities often creates difficulties for the entrepreneur rather than providing support. This article provides a comparative study of the significance of hybrid financing (the synergy of debt and equity instruments) for entrepreneurial activity and the international models for its legal regulation. The research objective is to establish the legal and theoretical foundations for introducing hybrid financing into Uzbekistan's developing capital market and to develop practical recommendations based on advanced foreign experience. The study illustrates the role of hybrid instruments in risk diversification and enhancing company flexibility. Unlike traditional financing methods (bank loans or common stock issuance), hybrid instruments such as convertible bonds and mezzanine financing are considered the most effective way to raise capital for early-stage enterprises. The main body of the article compares some key legal regulation models for hybrid financing. Based on the analysis, the necessity of introducing relevant amendments to Uzbekistan's legislation, primarily to the Laws "On the securities market" and "On joint-stock companies and protection of shareholders' rights" is substantiated for the implementation of hybrid instruments. Key tasks include establishing a clear legal status for convertible

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debts, strengthening investor protection mechanisms, and simplifying disclosure requirements.

Keywords: Hybrid financing, convertible bonds, mezzanine financing, legal regulation, capital market, entrepreneurship, investor

Introduction

The development of entrepreneurial activity is primarily determined by the availability of adequate financing sources. Financing is the process of attracting monetary funds necessary for entities to start, expand, and modernize their operations. Conventional financing methods, particularly bank loans and equity issuance (capital financing), have long served as the main pillars of economic development. However, each method has inherent limitations: bank loans are restricted by high interest rates and stringent collateral requirements, while equity financing (such as an Initial Public Offering—IPO) demands complex legal procedures and high costs.

Current global financial market trends, particularly those stemming from the needs of Small and Medium Enterprises (SMEs), increasingly demand new financing instruments that combine the advantages of both debt and equity. Hybrid financing emerges as such an alternative solution, significantly differentiating itself through its inherent flexibility. Its core characteristic is the ability of a debt instrument (e.g., a bond) to acquire the features of an equity instrument (a share). This means an investor initially receives a fixed interest income as a creditor but is granted the right to convert that debt into shares in the future, based on the company's growth. This mechanism allows companies to mitigate financial risks and enhance investment attractiveness.

Globally, the importance of hybrid financing is growing annually. In the United States, startups actively attract venture capital through convertible loans, while in developed markets like the European Union and Japan, large corporations are expanding their capital base using convertible bonds. Practice in these financial markets indicates that hybrid instruments not only create convenience for companies but also offer investors the potential for high returns alongside lower downside risks.

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These global trends necessitate the study and introduction of hybrid financing mechanisms into national legislation, alongside taking necessary measures to protect the rights of both parties during the legal regulation process. The legal framework governing these mechanisms is crucial for shaping the investment environment and ensuring financial stability.

Materials and Methods

This article constitutes a research study based on the analysis of various sources. The methodology employed involves the examination of scientific concepts, the perspectives and conclusions of practitioner-scholars within the field. Furthermore, the study utilizes a comparative-legal analysis of various hybrid financing models across different jurisdictions. The research began with an exploration of the core concepts related to the topic, followed by a comparison of different hybrid financing mechanisms used for entrepreneurial activities. This comparative step focused on contrasting their advantages and evaluating the respective legal regulatory mechanisms governing them.

Subsequently, the study provides conclusions regarding the broad introduction of new financing mechanisms into practice and the improvement of relevant legislation. The realization of these conclusions serves several objectives: fostering robust financial and legal solutions for entrepreneurs in conducting their activities, stimulating a unique competitive environment among financial institutions and investors, guaranteeing investors' rights, and consequently, establishing an environment of trust between investors and entrepreneurs.

Research findings

Conventional methods of financing entrepreneurial activity, such as bank credit, leasing, and factoring, continue to play a crucial role in business development. Their primary advantages lie in their stability, clear regulations, and widespread accessibility. However, in today's rapidly changing, digitalized, and innovation-driven era, their drawbacks in terms of flexibility and speed are becoming increasingly apparent.

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Traditional financial institutions often shy away from high-risk projects. The global market demands fast and flexible methods of entrepreneurial financing to strengthen the guarantees of rights for both the entrepreneur and the investor.

It is precisely due to these shortcomings that non-conventional financing, particularly hybrid mechanisms, is gaining paramount importance today. These can be accurately defined as securities that combine elements of both debt obligations and equity participation instruments. They are an attractive tool for companies seeking financing without increasing nominal debt or diluting the stakes of existing shareholders.

The core function of hybrid financing, as highlighted in academic literature, is to bridge the gap left by traditional financing and to ensure the financial stability of the initiative. Consequently, hybrid instruments serve to combine not only financial efficiency but also strategic and social efficiency. If an enterprise is solely focused on maximizing profit, it would opt for conventional debt or equity. However, entities with a hybrid mission (i.e., those with both social and commercial objectives), such as social enterprises, inherently require a hybrid financing structure (for instance, a combination of grants and investment capital) [1].

Dr. Robert X. Thomas highlights that the main problem in the legal regulation of hybrid financing is that these instruments often fall into the gaps between debt and equity legislation, which complicates the determination of investors' legal protection [2].

In analyzing the regulatory challenges of hybrid instruments, the classic liberal perspective of jurist Richard A. Epstein is crucial. Epstein emphasizes the need to be cautious about excessive state regulation of financial markets, arguing that private interests are often more effective than government control in assessing various risks.

In his view, government oversight requires costly standard measures (e.g., registration), and the value of regulation tends to decrease over time, a phenomenon known as “Regulatory Depreciation”. Epstein's criticism is that excessive regulation increases the concept of “Sovereign Risk”, leading to capital flight from the domestic public securities market. Consequently, companies are forced to place hybrid instruments through less-regulated private

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offerings rather than public offerings. The main conclusion derived from this is that the legal protection of complex instruments like hybrids becomes largely dependent on private contractual agreements rather than the direct control of the state regulator [3].

At first glance, the distinction between debt obligations and equity appears clear: debt must be repaid, while equity represents an existing ownership share. Debt obligations usually have a maturity date and fixed interest payments, and in the event of bankruptcy, their repayment takes precedence over the distribution of profits to shareholders. Conversely, shares have no repayment date and their value depends on the company's performance, with shareholders entitled to assets only after all other liabilities are met [4].

The legal classification of a hybrid instrument becomes critical, especially during a company's distressed periods. For example, when a company's financial condition deteriorates, its solvency may hinge on how the security is classified under the law. If a hybrid instrument is characterized as debt, it increases the company's liabilities, which could potentially trigger insolvency. Conversely, classifying it as equity allows the company to avoid such a consequence. Thus, the legal nature of the security is an exceedingly important factor influencing the company's financial health and its ability to avoid bankruptcy. This implies that the selection and structuring of a hybrid instrument is not merely a financial decision, but primarily a legal one.

Various instruments are cited by different scholars and sources as examples of hybrid mechanisms. Specifically, J. Tirole [5] refers to subordinated debt, preferred shares, and convertible debt as such examples, while Lorenzo Sasso [6] focuses primarily on preferred shares and convertible bonds.

By distinguishing the debt (e.g., credit, loans, etc.) and equity (right to acquire shares) components of hybrid financing instruments, T.G. Bondarenko and O.A. Zhdanova [7] note that hybrid instruments include an investor's option or an issuer's option.

Despite the absence of a clear and unified list of such instruments, hybrid financing encompasses a variety of instruments that tend to lean more towards either equity financing (e.g., preferred shares) or debt financing (e.g., convertible bonds).

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One of the hybrid instruments widely used in contemporary global practice is the convertible bond. Such bonds, in addition to accruing interest, grant the investor the right to convert them into company shares upon the fulfillment of specific conditions. Unlike conventional loans, these bonds have a pre-agreed maturity date, by which time they must be either repaid or converted.

The Simple agreement for future equity (SAFE), developed in the US, differs significantly from convertible bonds. By its legal nature, SAFE is not considered debt. It has no maturity date and accrues no interest, which reduces the financial burden on startups. SAFE converts into an equity share only upon the occurrence of a specific event, such as a new round of financing. This makes it a more flexible instrument for startups but offers investors less protection due to the absence of a repayment obligation [8].

Additionally, some sources indicate that Contingent Convertible Bonds (CoCos) are also a hybrid instrument. This is a specialized type of hybrid security primarily used by banks and other financial institutions. Their key feature is that these bonds automatically convert from debt to equity (or are entirely written down/lose their debt status) when the issuing company's (often a bank's) financial condition deteriorates to a certain predefined level. This mechanism mitigates systemic financial risks, allowing banks to attract capital without the fear of capital flight [9].

According to Professor Andrew Guzman, the legal challenge of issuing CoCo bonds is that bondholders may lose their claims during a crisis, leading to serious legal uncertainties regarding investor protection [10]. From a legal standpoint, the most complex process in CoCo issuance involves determining the conversion price and ensuring the precision of the trigger mechanism [11]. An inaccurately defined trigger could lead to market panic or unjust losses.

As a country with a Civil Law system, **Germany** has developed its own widely used hybrid instrument: the Wandeldarlehen (Convertible Loan). By nature, this is subordinated and, as a rule, unsecured debt that grants the investor the right or the obligation to convert it into an equity stake in the startup's capital in the future. Such a mechanism allows the company's valuation to be postponed until a new, larger financing round takes place, which is particularly favorable for startups whose market value is uncertain in the initial stages [12].

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In German legal practice, the main legal uncertainty concerning the Wandeldarlehen is related to the necessity of notarization. This issue remains contentious among legal scholars and depends on the specific content of the agreement. If the contract stipulates only the loan and the right to convert, notarization is generally not required.

However, if the contract provides for shareholders' obligations regarding a capital increase or mandates the investor's adherence to an existing shareholders' agreement (e.g., including drag-along or tag-along clauses), then notarization becomes mandatory.

In an effort to ensure speed and minimize costs, parties often choose to waive notarization, which subsequently creates the risk of the contract being deemed invalid in the future [13].

Canada is distinguished by its unique "bi-juridical" legal system. Alongside federal legislation, two main legal traditions operate: Common Law in most provinces and Civil Law in Quebec. This juridical division also extends to the regulation of the securities market, which primarily falls under the jurisdiction of the provinces and territories.

Hybrid instruments such as Convertible Notes and SAFE (Simple Agreement for Future Equity) are widely used within the Canadian startup community. Convertible notes are classified as debt obligations that accrue interest and have a maturity date. Conversely, SAFE is considered an equity participation instrument that does not carry a debt obligation.

National Instrument 45-106 (NI 45-106 – Prospectus Exemptions) [14] is one of the key legal documents aimed at unifying Canadian securities legislation, and it is effective in nearly all Canadian provinces and territories. Its primary goal is to establish rules that provide an exemption from the requirement to file a prospectus. The public placement (i.e., sale to any investor) of securities typically requires the preparation of a prospectus, which is a costly and lengthy process for startups and small companies. NI 45-106 defines rules that allow companies to raise capital through private placements without a prospectus. This instrument is particularly significant in the distribution of hybrid financing tools, as the majority of them are executed via private placements.

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Within the framework of National Instrument 45-106 (NI 45-106), several types of exemptions are applied, which are vital in the startup ecosystem:

Exemption type	Primary description	Impact on hybrid instruments
Accredited investor exemption	Permits the sale of securities only to accredited investors (i.e., wealthy and qualified investors with high income or substantial assets).	The most widely used route for Convertible Notes and SAFE. The investor's financial capacity implies they can understand the risk even without a prospectus.
Minimum amount exemption	An exemption applies if the investor commits to investing a minimum of $50,000 in a single project.	Allows the sale of securities without a prospectus to investors who commit larger amounts of capital.
Existing security holder exemption	Allows the sale of additional securities to the company's existing shareholders or bondholders.	Beneficial for the conversion of hybrid instruments or subsequent financing rounds.

NI 45-106 was created to harmonize regulation within Canada's bi-juridical system (the coexistence of Common Law and Civil Law).
This instrument establishes cooperation among securities regulators across different provinces via the "Passport System." This means that an exemption obtained by a company in one province (e.g., Ontario) is recognized in other provinces (e.g., Quebec).
Nevertheless, NI 45-106 only unifies regulatory procedures (specifically, prospectus exemptions). It does not alter the fundamental rules of private law (such as the form of contract formation, their validity, etc.). Therefore, the legal nature of convertible instruments can be interpreted differently in Common Law provinces and in the Civil Law province of Quebec.
Unlike other countries, Turkish legislation lacks a specific statute regulating convertible bond agreements. Their validity and enforcement rely on the Principle of Contractual Freedom enshrined in the Law of Obligations. According to this principle, parties are free to determine the type, subject matter, and terms of their agreements, provided these agreements do not contradict mandatory legal norms, public order, or moral standards.
This flexibility allows parties to structure transactions autonomously but, at the same time, introduces significant legal uncertainty. For instance, in practice, to

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circumvent the legal prohibition on companies repurchasing their own shares, a symbolic single share is often given directly to the investor before the capital increase. This allows the investor to become a shareholder and participate in the conversion process [15].

The first step toward formalization was taken in May 2020 through an amendment to the "Circular on Capital Movements." This amendment established a legal basis for convertible loans, albeit with a limited scope, applying only to foreign investment funds and requiring compliance with specific conditions.

Nevertheless, the risk remains that resolving disputes concerning such agreements without clear legal regulation can be highly complex. This demonstrates the trade-off between flexibility and legal certainty: while the principle of contractual freedom allows for the rapid conclusion of transactions, it creates a legal vacuum that can lead to unexpected outcomes in the event of disagreements.

The United Arab Emirates (UAE) and Qatar have established financial free zones, which are essentially autonomous jurisdictions with their own civil and commercial laws. This model allows them to offer foreign investors tax incentives and simplified legal procedures, thereby minimizing the risks associated with local national legislation.

The legal systems of these zones are based on Common Law principles. Abu Dhabi Global Market (ADGM) is considered the first financial free zone in the world to directly apply English Common Law, and its courts adhere to English legal norms. Its regulatory body, the Financial Services Regulatory Authority (FSRA), is known for its innovative and progressive approach, which includes RegLab, a "regulatory sandbox" designed for Fintech startups.

The Dubai International Financial Centre (DIFC) possesses its own independent Common Law system, which is largely based on English Law. Its regulator, the Dubai Financial Services Authority (DFSA), places a strong emphasis on investor protection and market integrity. The Qatar Financial Centre (QFC) also has its own regulatory body, the Qatar Financial Centre Regulatory Authority (QFCRA), which strives to promote innovation and enhance competitiveness.

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The creation of such legal enclaves (i.e., legally separated zones) is a strategic decision that allows them to bypass the potential barriers of national civil law and provide international investors with a predictable and familiar legal environment. This model demonstrates how legal innovations can be utilized to attract capital and create a competitive financial center.

The legal foundation for hybrid financing in the Republic of Belarus was established by the President's Decree No. 8 "On the Development of the Digital Economy," which came into force in 2018. This document, developed with the participation of the High-Tech Park (HTP), was aimed at creating favorable legal conditions for the IT sector, as well as attracting foreign investment and fostering startup development [16].

The uniqueness of this Decree lies in the fact that it introduced separate institutions of English Law into the Belarusian legal system, which is fundamentally based on Civil Law. Specifically, it legalized agreements on convertible loans alongside option agreements, non-compete agreements, and other instruments. This approach was termed "Super Law" — a unique legal hybrid combining the best features of both legal systems.

Analysis of Research Findings

The comparative analysis demonstrates that Civil Law countries, such as Germany, South Korea, Turkey, and Belarus, traditionally rely on a deductive approach. In this approach, the legal norm originates from a comprehensive code. This is clearly manifested in South Korea's FSCMA (Financial Investment Services and Capital Markets Act), and in Germany's GmbHG (Limited Liability Companies Act) and AktG (Stock Corporation Act).

Canada (excluding Quebec), as well as the financial free zones of the UAE and Qatar, utilize an inductive approach. Here, legal norms are founded on judicial precedents and often supplement general legislation. While Turkey, a Civil Law country, has created a "de facto" practice-based system by employing the broad principle of contractual freedom, Belarus has established a unique legal hybrid by "de jure" incorporating certain institutions of English Law into its national legislation.

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Comparative analysis of legal mechanisms for hybrid financing

Country	Primary Legal Basis	Common Instruments	Classification (Initial)	Regulatory Authority
Germany	Commercial Code, GmbHG, AktG	Wandeldarlehen (Convertible Loan)	Debt	No unified regulator
Canada	Provincial Securities Acts, NI 45-106 (Prospectus Exemptions)	Convertible Notes, SAFE	Debt (Notes), Equity (SAFE)	Provincial Securities Commissions
South Korea	FSCMA (Financial Services and Capital Markets Act), Commercial Code	Convertible Bonds	Debt	Financial Services Commission (FSC)
Turkey	Law of Obligations	Convertible Notes	Debt	No unified regulator
UAE (DIFC/ADGM)	Common Law (in Free Zones)	Convertible Debt, SAFE	Debt or Equity	Dubai Financial Services Authority (DFSA), Financial Services Regulatory Authority (FSRA)
Qatar (QFC)	Common Law	Convertible Debt, SAFE	Debt or Equity	Qatar Financial Centre Regulatory Authority (QFCRA)
Azerbaijan	Law on the Protection of Foreign Investments	Informal Instruments	Varies	Central Bank, IDDA
Belarus	Presidential Decree No. 8	Convertible Loan	Debt or Equity	High-Tech Park (HTP)

The primary risk for investors in hybrid instruments lies in their subordinated (secondary) nature. This means that in the event a company becomes insolvent, investors are entitled to the company's assets only after all other creditors' claims have been satisfied. It is at this critical stage that the legal classification of the instrument becomes crucial, as it determines whether its holders will be treated as creditors or as shareholders.

Legal systems for investor protection also vary across different countries. In many cases, hybrid instruments like the Wandeldarlehen (Convertible Loan) in Germany are unsecured. This consequently increases the risk for the investor. Conversely, convertible bonds typically grant the investor the right to demand

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repayment of the principal and interest if the conversion event does not occur, which provides a certain degree of protection.

In South Korea, the regulator actively intervenes to prevent fraud related to convertible bonds. In the Republic of Belarus, investors are formally protected from nationalization and have the right to transfer profits; however, these guarantees become conditional due to geopolitical risks and sanctions. In Turkey, the resolution of disputes can be complicated by the lack of specific regulation.

Conclusions

Hybrid financial instruments are an integral part of the modern financial and legal system, yet their legal status and regulatory environment vary significantly across jurisdictions. The central dilemma faced by all countries is finding a balance between legal certainty (essential for investor protection) and commercial flexibility (necessary for companies).

While Civil Law countries typically rely on codified laws, Common Law countries and their analogues in free zones employ more flexible, practice-based approaches. As venture capital and Fintech markets evolve, a global trend towards greater legal formalization of hybrid instruments is observable, exemplified by legislative activities in South Korea and Azerbaijan.

Given that Uzbekistan's legislation is codified and based on explicit norms, it is pertinent to develop the scientific and theoretical aspects of hybrid financing methods. Therefore, drawing upon the experience of countries like Germany, Turkey, and Azerbaijan, the substance of these financing types and the procedure for formalizing rights and obligations between parties should be reflected in civil legislation.

Based on the analysis results, considering the specific characteristics of each financing method, it is expedient to reflect the rights and obligations of the investor and the entrepreneur, the methods of securing obligations, the legal status of investors, and the requirements imposed on them in the newly drafted Entrepreneurship Code. Furthermore, it is appropriate to introduce relevant amendments to the Law “On Securities” and the Law “On Joint Stock Companies and Protection of Shareholders' Rights.”

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The improvement of legislation in this area and the clear definition of legal regulatory mechanisms for each financing method will not only expand the opportunities for nascent entrepreneurs but will also serve to increase the flow of foreign investment into the Republic by reducing legal risks and ensuring legal certainty.

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