One of the main objectives of founding partners of startups, especially when they are in the so-called early stage, that is, a company in an initial stage, is the search for financial resources to enable the development and growth of their company, and the contribution of such resources financial resources usually occurs through raising investments.

Bearing this in mind, the path to be taken by startups, whatever the segment, is the business's exponential (scalable) growth through increased revenue, customer base, and brand positioning in the segment in which it operates, various other forms and methods of company consolidation, among others. With this, the startup starts to attract the attention of potential investors. Through pitches, meetings, and other ways of publicizing the business, the founding partners start to receive proposals for investment in the company.

The beginning of negotiations for investing in startups involves signing the initial documents (term sheet, memorandum of understanding, letter of intent, etc.), in which the main negotiation rules will be listed so that, in the sequence, due diligence is carried out, where investors will verify the feasibility and security for the realization of the contribution in the company. Both themes have already been the subject of their own text on this blog.

The subject of this text is the final phase for the completion of the contribution, marked by the discussion between partners and investors of the most appropriate legal instrument to support the contribution after the term sheet/memorandum of understanding has already been signed, as well as the due diligence has been completed satisfactorily.

It is important to highlight that investors and founding partners often discard the signing of initial documents and due diligence, going straight to negotiating and signing the contractual instrument to formalize the investment; this occurs most often in early-stage startups and when the amount of the contribution is less than R$ 500,000.00.

Thus, some of the most common instruments for this type of transaction can be identified as convertible loan contracts, participation contracts (angel investment), as well as investment contracts or agreements. It also mentions contracts that are not common for this type of investment, but which can also be used depending on the operation, such as contracts for the purchase and sale of quotas or shares, purchase option contracts, and the incorporation of companies in the participation account.

That said, it is worth mentioning the main characteristics of the contractual instruments most used to carry out such investments:

- **Loan Convertible into Equity Interest**: It can be said that the most used contractual instrument for investments in startups is the loan agreement convertible into equity interest. The loan contract, more precisely the pheneratic loan, is originally a money loan regulated by Article 586 of the Civil Code, where the borrower (the one who receives the loan) has a deadline to return the amount with interest.

In this way, the loan agreement convertible into equity interest can be conceptualized as an instrument that, instead of the investee company returning the amount in cash to the investor, the payment is made via the granting of participation in the company's share capital. In this way, the advantage of using the convertible loan is that the investor does not assume from the beginning the risks of the company's exploited activity since the entry as a partner in the company will only occur in the future, according to the cases provided for in the instrument itself, generally associated to a scenario of prosperity.

Bearing this in mind, the most common rules for converting the value of the loan into equity interest are translated into the following hypotheses: (a) obligatorily and automatically, when a third party makes its investment in the company, the so-called **liquidity event**; and (b) optionally, at any time the investor wishes, within the term agreed between the parties.

It is also possible, in the context of the convertible loan agreement, that investor rights are provided for with regard to the running of the startup by the founding partners, especially the right to vote in the affirmative for key resolutions to be approved by the partners, such as, for example, changing the company's corporate purpose, carrying out corporate operations, or any other resolutions that generate significant impacts on the company's reality.

- **Participation Agreement – Angel Investment**. Another contractual instrument used is the participation contract, introduced into Brazilian legislation by Complementary Law No. 155/2016 ("LC No. 155/16"). Angel investors are normally experienced individuals in the business field who already have a consolidated career and who, therefore, in addition to helping society financially, are able to provide their experience, playing a fundamental role in society's growth.

In brief, the angel investor is an individual or legal entity that will contribute capital to a micro-enterprise or a small business, and with that said, capital contributions will not be part of the company's share capital and will not be considered as income. That is, the investment will be used to promote and innovate the business.

The figure of the angel investor has many peculiarities and is very important for the evolution of startup companies, so that LC nº 155/16, which amended LC nº 123/06, established a series of prerogatives for angel investors in terms of participation agreement, such as: (i) the angel investor will not be considered a partner nor will he have any right to manage or vote in the company's management (until the investment is converted into equity interest); (ii) will not be liable for any debt of the company, including within the scope of judicial recovery, not being affected, yet, by the effects of disregarding the legal personality (art. 50 CC); (iii) will be remunerated by contributions, under the terms of the participation agreement; (iv) the participation contract cannot exceed 07 (seven) years; and (v) in cases of sale of the company by the controlling shareholder, he will have the preemptive right in the acquisition of the quotas or he will be able to exercise the joint sale right, the so-called tag along clause.

Finally, it is worth mentioning that in practice, the participation contract – angel investment is used much less frequently than the convertible loan contract.

- **Other Contracts Used**. As previously mentioned, other contractual instruments can also be used for investment in startups, such as the purchase and sale agreement of quotas or shares. However, it is important to point out that in these cases, the investor becomes a partner of the company from the beginning, which can bring risks to both the investor and the company itself.

In view of the above, considering that the moment of raising investment by a startup must be treated with great seriousness and care, the choice of the most appropriate instrument will depend both on the reality of the startup and on the interests of the parties. Despite there being more common and more commonly used drafts, depending on the specific case, other instruments will be more adequate, and the draft to formalize the investment must have its clauses adjusted to reflect the interests of the founding partners and the investor.