

### **Vehicle registration certificate as an atypical collateral**

**In the event of credit facilities requested for vehicle purchase, it is a standard practice that the investor has the prohibition of alienation and encumbrance registered in the official register in order to secure the loan agreement, or s/he also keeps in his/her possession the vehicle registration certificate as long as the debtor has not fulfilled his/her obligations arising from the loan agreement.**

#### **Recent decision of the Curia**

In its latest decision, the Curia has pointed out that the Parties, in order to secure the loan agreements, may also stipulate the handing over of the vehicle registration certificate to the creditor as an atypical collateral not defined in the Civil Code. However, from the loan agreement, or the general terms and conditions, which have become part of the agreement, it must be clear that the right to keep possession of the vehicle registration certificate serves as a standalone collateral.

#### **Contracts relating to vehicle financing**

The debtor and the creditor enter into a loan agreement for financing vehicle purchase, and the general terms of business of the providers of funds include the arrangements regarding the issue of the registration certificate. Thus, the general terms of business provide that the debtor is required to register the limitations in favour of the provider of funds in the official register, in the licence and in the registration certificate of the vehicle as to that the authority is obliged to send the vehicle registration certificate to the provider of funds. If the debtor fulfils all his/her obligations undertaken in the loan agreement, thus the provider of funds will issue the vehicle registration certificate and the declaration included therein on the cancellation of restrictive registrations to her/him.

#### **The right to keep possession of the vehicle registration certificate can be lawfully stipulated**

It has been also stated in many court judgements that the right to keep possession of the vehicle registration certificate can be stipulated as a standalone atypical collateral. On this basis, the investor can lawfully keep in his/her possession the vehicle registration certificate as long as the debtor has not fulfilled all his/her outstanding obligations arising from the loan agreement. (BH2017.95, BH2017.13, Pfv.V.21.971/2015/6 of the Curia).



However, it is necessary that **either the loan agreement or the terms of business of the provider of funds must clearly define the standalone collateral nature of the keeping possession of the registration certificate** to ensure that the keeping possession of the registration certificate effectively fulfils its role of collateral in connection with the loan agreement.

### **Providers of funds are engaged in bad practices**

The court has stated in a recent case (although by applying the old Civil Code) that the providers of funds did not act carefully during drafting of the loan agreement and the terms of business. The court challenged the provision of the terms of business, which although stipulated the relevant provision among the obligations of the borrower that vehicle registration certificate must be sent to the creditor by the authority keeping the register of vehicles, did it in light of the fact that call option right or mortgage, and prohibition of alienation and encumbrance to secure the aforesaid must be registered in favour of the creditor in the licence and the registration certificate of the vehicle. The court highlighted that it did not give rise to that keeping possession of the registration certificate had been stipulated as a standalone collateral.

Furthermore, it is important to highlight that **it can result in the termination of the collateral if the keeping possession of the registration certificate has been stipulated as ancillary collateral rather than standalone collateral.** It may occur when the parties stipulate this collateral in an ancillary contract. However, the threat thereof is that the collateral will also be terminated upon possible termination of this contract, although the loan agreement still exists and the debtor has not yet fulfilled his/her obligations. This is what also happened in the case No. BH2017.95 falling within the scope of effect of the former Civil Code, where the court stated that the parties had stipulated the prohibition of alienation and encumbrance in order to secure the call option right aimed to secure the loan agreement rather than to directly secure the loan agreement, and also in connection with this, they had also provided for the handing over of the registration certificate. Considering this, the right to possess the registration certificate became an ancillary right attached to the option right, which considering its ancillary nature was also terminated simultaneously to the termination of the option right. For this reason, in this litigation case, the provider of funds was not entitled to keep in his/her possession the registration certificate following that his/her call option right had been terminated.

As a matter of interest, it must be highlighted that in this litigation case the provider of funds also argued with that the standalone collateral had been established between the parties by conduct. However, the Curia rejected it with reference to that **in terms of the Act on credit institutions and financial enterprises, the collateral of the loan agreement can be exclusively provided for in writing.**



**What does standalone collateral mean? How should the terms of business or the loan agreement be drafted that the right to take possession of the registration certificate appears as standalone collateral?**

The right to keep possession of the registration certificate fulfils its role as standalone collateral only if either the loan agreement or the terms of business of the provider of funds clearly includes that the right to keep possession of the registration certificate serves as a standalone collateral of the loan agreement. The solution should be avoided that the provider of funds takes possession of the vehicle registration certificate in favour of the enforceability of only the option as well as the prohibition of alienation and encumbrance as successive obligation (other than in the case of consumer credit agreements). Furthermore, it is important that the stipulation regarding the registration certificate should have no strong link with ensuring the option right, and the prohibition of alienation and encumbrance, and should have no ancillary nature regarding its wording, namely its legal nature should not share the nature of primary collaterals.

If the right to keep possession of the registration certificate is stipulated as standalone atypical collateral in the loan agreement rather than in the terms of business, it is a more favourable solution for the provider of funds. The reason for this is to exclude the risk that the general terms and conditions of the terms of business may nevertheless not become part of the loan agreement.