

## **No Call Option To Secure Creditors From Next March**

**According to our new Civil Code to take effect as of 15 March, 2014 any provision directed at the transfer of ownership, other right or claim or creation of call option for the purpose of securing pecuniary claims – other than the collateral arrangements set out in the directive on collaterals – shall be deemed null and void, implicates the expert of Kovács Réti Szegheő Attorneys at Law to origo the amendment having extremely significant repercussions as regards lending practice. Dr. Arvid Hauck indicates, The current practice has compelled and is compelling courts to face serious challenges on several occasions and in the society of legal experts, huge debates have been provoked in this respect.**

Having regard to the fact that our currently effective Civil Code explicitly omits to incorporate the so-called fiduciary securities i.e. the security-purposed transfer of ownership, creation of call option, transfer of claims, provoking cutting debate in the legal literature earlier as to whether these transactions can be concluded for securing other transactions.

Over the course of years, the jurisdiction practice has adopted the institution albeit its application has on several occasions compelled courts to face serious challenges, the expert of Kovács Réti Szegheő Attorneys at Law points out.

### **Did Creditors Acquire Excessive Rights At Debtors' Expenses?**

During the application of these transactions the creditor acquires the ownership of the asset constituting the collateral or the relevant call option. In such cases the debtor and the creditor determine how the creditor can exercise the ownership right or the call option in the framework of a contract.

Through the conclusion of these transactions the creditor is placed in a more favourable position as if its claim was secured by pledge on account of its being able to more simply and speedily assert its claim.

According to the reasoning of the bill on the new Civil Code, the fiduciary securities shall be deemed null and void owing to the fact that these enable creditors to acquire rights at the expense of debtors, in excess of what really is necessary and legally justified to securing their respective claims. Besides, the fiduciary securities would entail the avoidance of rules for safeguarding the interests of other creditors of the debtor.

Nevertheless, the reasoning attached to the bill omits to explain the exact meaning of 'fiduciary.'

### **Only For Securing Pecuniary Claims**

On the other hand, the reasoning attached to the new Civil Code stipulates that the prohibition of fiduciary security shall only be applicable for securing monetary claims, and shall not render "setting out of call option securing of the successful realisation of for example a project financing having complex nature" invalid.



The legal rule shall not be applicable in respect of collateral arrangements determined in Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.

Apparently from Article 1 e) of the Directive, natural persons shall not fall within the personal scope of the directive, pursuant to which it is unambiguously determinable on the basis of the relevant legal provision setting out the prohibition of fiduciary securities, that it shall be applicable in respect of any contract for transfer of ownership, any right or claim, creation of call option where one or both parties are natural persons, the expert of Kovács Réti Szegheő emphasises.