Content of question:

Is it possible for a creditor to accept and recognise for regulatory purposes protection in the form of own participating securities or participating securities issued by members of the same consolidation group?

Answered by: **Radka Litošová, Martin Pícha**
Approved by: **Pavel Vacek**
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Piece of law	**Decree No. 123/2007 Coll.**
Provision	**Annex 15, A, I, 2, b), 8 and Annex 15, A, I, 2, d), 1**
Explanation	'Participating securities' shall mean "shares or scrips or transferable securities through which shares or scrips of the target company can be acquired" pursuant to Article 183a of Act No. 513/1991 Coll. (the Commercial Code). Selected types of participating securities – shares and convertible bonds – can thus become eligible financial collateral pursuant to Annex 15, A, I, 2, b), 8 or Annex 15, A, I, 2, d), 1 to the Decree. A prerequisite for eligibility is their inclusion in the main index or, alternatively, fulfilling the conditions under letter d) in case the Financial Collateral Comprehensive Method is applied. The general eligibility criteria laid down for financial collateral in Annex 15, A, I, e) and the prerequisites for eligibility laid down in Article 103 must be met as well. Own participating securities or participating securities issued by members of the consolidation group whose member the creditor is need not be excluded from eligibility, as long as they meet the above conditions. At the same time it is necessary to abide by the rules for the acquisition of certain types of assets by a bank (Article 190 of the Decree). In the case of collateral received as protection there is basically no problem because "realisation" of collateral almost always means encashment in the Czech legal environment. A receivable from an exposure can subsequently be collected only from the proceeds from its encashment and an acquisition of the collateral does not occur. An exception is financial collateral pursuant to the Commercial Code where it is allowed for a creditor to appropriate the financial collateral or exercise rights attached to the collateral. However, even in the case of financial collateral the possibility to appropriate and thus acquire financial collateral is always through a voluntary legal act and not a compulsory legal act. Therefore, it is within the ability of the creditor to ensure that Article 190 is not breached – it can avoid acquiring the securities into its ownership by their encashment and by collecting its due receivable from the encashment proceeds.