

Liability for defective prospectus

Abstract

The aim of my thesis is to provide a paper that discusses the overall consequences of an issuer who, in connection with public offer of securities or their admission to the trading on regulated market, provide and make public a defective prospectus that contains untrue, incomplete and misleading information. The thesis does not deal with all aspects of the laws of prospectus. Instead, it focus on particular issues in relation to the prospectus. Mainly, it deals with civil liability arising out of the defective prospectus. As a consequence, the other sanctions, eg. administrative or criminal, are not included in the thesis.

In my thesis, I consider prospectus as an informative document that ought to provide certain information in order to protect investors. These information must not be untrue, incomplete or misleading so that the high standard of protection to investors is preserved. High standard of investors protection include, inter alia, higher liability attached to a prospectus.

Legal regulations governing civil liability attached to a prospectus are not harmonized on the EU level. Instead, broad discretion is given to Member States in order to provide their own legal regulation regarding civil liability for a defective prospectus. That opens free field for the Czech law instruments to govern above mentioned civil liability. Civil liability under the Czech needs to be interpreted as contractual liability and in a limited manner as statutory too. Other than that, it is necessary to apply laws of legal error and unfair competition in relation with the defective prospectus. Nevertheless, the contractual liability should be the primary source of potential remedies caused by the defective prospectus. High level of investor's protection, especially of retail investors, as well as duty of care of the issuer are the arguments for that conclusion.

Klíčová slova: prospectus, liability, issuer