

Business Corporation v. Trust Fund from a Creditor's Point of View

Abstract

This diploma thesis deals with the analysis of the legislation regulating the functioning of limited companies and trust funds, specifically the issues of importance for the position of their external and residual creditors. The main goal of the thesis is to compare the mentioned entities and to gradually answer the question, which of them is more attractive for the creditor's position, and under what conditions respectively. The thesis is composed of a relatively shorter general part and of a main special part, together internally subdivided into eight partial articles. Regarding the applied methods, the thesis mainly uses analysis and comparison of domestic legal rules; the case law, mostly domestic, is quoted in order to present concrete manifestations of general rules in real instances.

Following the definition of the subject of the thesis in its introduction, the general part firstly defines and examines, to the extent necessary, the concept of limited company, trust fund and the person of a creditor. In addition thereto, the thesis provides an explanation of the consequences of defects in legal acts. Special part of the thesis firstly concentrates on the issues of importance to the creditors arising in connection to the commencement of existence of both entities, including the creation of their equity substance. Furthermore, the internal relationships are investigated, especially with focus on the degree of their flexibility and the strength of position of participating residual creditors. The most extensive section of the special part centres on the status and liability of members of elected bodies and of the trustee, followed by a segment on the rules of creation and expression of will and the rules governing the distribution of equity. The special part is concluded by an analysis of the reasons and the process of dissolution of both entities, especially with regards to the settlement of existing external legal relationships.

The diploma thesis asserts that the trust fund is potentially a safer harbour for the protection of once acquired assets against prospective creditors of the settlor and that it may, in certain circumstances, also be more suitable vehicle for carrying out business intentions which are in their nature only, however complicated, property transactions. In other cases it is recommended, in the absence of relevant decision-making practice of high courts and also due to the sophistication and complexity of corporate law, to remain with the limited companies.

Key words: Trust Fund, Limited Company, Creditor