

Insolvency of a Subsidiary Corporation and its Group Consequences

Abstract

The thesis deals with insolvency of a subsidiary corporation and its group consequences. The thesis focuses on description and analysis of consequences of subsidiary's insolvency putting emphasis on parent company and the way in which creditors of a subsidiary can protect their claims within the Czech corporation and insolvency law. The keynote of the thesis is the fact that the economic reality of operation of a corporate group collide with the separate entity principle and the doctrine of limited liability.

First the thesis analyses the ways how the parent company exerts influence over the subsidiary, because on its relation to the subsidiary depend the consequences concerning the responsibility for the insolvency of the subsidiary. Then the concept of de facto directors and shadow directors is explained. This concept is based on the real economic direction of the corporation, so the creditors could reach the assets of parent company by this concept without using the ultimate means as the doctrine of piercing the corporate veil. Finally, the thesis describes particular institutes of Czech corporation and insolvency law that provides for consequences that the insolvency of the subsidiary could cause in the sphere of the parent company. Some principles developed mainly by Anglo-American judicial doctrine are also involved and assessed.

It was concluded that the Czech law offers the ways how the creditors could claim on parent company, namely by using the principles of prohibiting the abuse of rights and good faith and fair dealing and the fundamental principles of insolvency law. The thesis suggests overcoming the deep-rooted attitude to the limited liability so that the limited liability is applied in relation to shareholder (natural person) – corporation only, not in parent company – subsidiary relation. The benefit of this suggestion is that the shareholders do not lose the privilege of the limited liability, but a parent company is losing its facility to shift risks unfairly and to make business at the expense subsidiary's creditors.

Key words: group, insolvency, subsidiary