

# **REGULATION OF LEGAL TRANSACTIONS WITH CONFLICT OF INTEREST IN JOINT STOCK COMPANIES AND LIMITED LIABILITY COMPANIES UNDER CZECH LAW**

## **RESUME**

The purpose of this thesis is to identify issues as regards interpretation and application of sec. 196a of Czech Commercial Code (hereinafter as “CC”) and provide possible solutions to selected issues.

The first chapter explains the context of sec. 196a CC within Czech legal system and provides overview of another rules regulating self-dealing and transactions with conflict of interest under Czech law. The self-dealing rules of sec. 196a CC apply both to management transactions and shareholders transactions.

The purpose and origin of sec. 196a CC is examined in the next chapter. It is partially a result of implementation of European Law (article 11 of Second Company Law Directive 77/91/EC). However, its purpose comprises also protection of company’s assets, shareholders, minority shareholders and third parties (such as creditors of the company).

The third chapter is considering requirements of sec. 196a CC as regards loan agreements concluded between the company and the connected persons, provision of security by the company and free transfers of company’s property for the benefit of the connected persons.

The thesis focuses on interpretation of a definition of contractual terms that are customary in the course of ordinary business. It is argued that terms that are more advantageous to the company are not in violation of sec. 196a (1) CC.

The next chapter defines transactions (transfers of property) that are subject to sec. 196a (3) CC and specifies legal requirements for such transfers. The purpose of these rules is to regulate undisclosed contributions in kind.

Legal transactions entered into in contravention with these requirements are considered to be void *ab initio* by Czech Supreme Court. Different alternatives such as concept of voidable transactions or concept of liability are considered.

It is argued that there is an implicit exception to the requirement of determining the price of a transfer of company's assets on the grounds of an expert opinion resulting out of amended Articles 10a and 10b of Second Company Law Directive although not explicitly implemented into Czech Law in the context of establishing a company.

In the last chapter, the thesis provides a comparative overview of the laws of Great Britain (particularly Companies Act 2006) regulating self-dealing and emphasizes the differences between Czech and English law.