

The purpose of my thesis is to analyze the legal regulations concerning one of the types of the groups of companies – the so called de facto group. The main reason I have chosen such a topic is that I consider the issue of the groups of companies to be of great importance nowadays and in my opinion the actual Czech legislation regarding de facto group does not entirely comply with the current needs, especially as to the protection of the most endangered subjects - minority partners and creditors of the members of the group. I have divided the thesis into three chapters.

The first chapter deals with the reasons for the formation of groups of companies in the past and nowadays, various attitudes to their legal regulations and in the end I am focusing on the crucial law regulating the groups of companies in the Czech republic – the Law No. 513/1991 Coll., Commercial Code, (hereinafter in this part referred to as the „Commercial Code“) together with a brief history outline of such legal regulations.

The second chapter deals with a specific type of groups of companies which has its origin in German legal system – the so called Konzern in German. In my opinion, the closest English equivalent is a concern, or a group. Our legal regulations concerning the groups of companies in the Commercial Code has been inspired by the German attitude to this issue, even though not in whole.

The third chapter is considered to be the main part of my thesis and is devoted to the de facto group.

Firstly, the concept of the de facto group is analyzed. Such a term has been developed by the legal experts and is used for a group where a uniform management of the managed person (persons) by the managing person is not based on the control contract.

Then I am looking into the relevant legal regulations of the Czech republic, which is primarily contained in the Commercial Code. Such a group is governed first and foremost by § 66a subsection 8-16 of the Commercial Code as a special regime for the control not based on the control contract. Members of the de facto group shall also observe other provisions of the Commercial Code related especially to the question of control or the groups of companies (§ 11 subsection 6 concerning the use of a business firm among the members of the groups, or § 190a et consequential concerning

the contract on the profit transfer etc.). Partial legal regulations related to the group of companies or a group in general we can also find in other respective Czech laws (for example Law No. 563/1991 Coll, on accounting, or Law No. 586/1992 Coll, on income taxes).

As our country is a member state of the European union (hereinafter referred to as the „EU“), the fourth section of the third chapter provides a short outline of some of the relevant *acquis communautaire*. Even though there exists no comprehensive legal regulations concerning the groups of companies on the EU level, relevant EU law shall be observed, such as applicable provisions of the Treaty on functioning of the EU or the secondary law.

The fifth section is dedicated to the legal regulations relevant for the *de facto* group in certain of the countries - Germany, England and the Russian federation.

I have chosen Germany as a representative of one of the approaches to the regulation of the groups of companies. The Law on joint-stock companies systematically regulates groups of companies, where the person controlled is a joint-stock company or a partnership limited by shares and provides for the different treatment of the members for the *de facto* and contractual group. If the person controlled is a limited liability company, different approach based mainly on general principles under the Law on limited liability companies, the Civil Code and the Insolvency Act applies. The rules contained in the Law on joint-stock companies have, to some extent, become a basis for the relevant provisions concerning groups of companies in our Commercial Code.

England and the Russian federation together belong to the group of countries which regulates the groups of companies only partially and which predominantly relies on the provisions generally applicable not only in the case of a group of companies. Besides, I have found interesting to look into the Russian legal regulations as the Russian federation is the representative of a non-member of the EU. In England, the most important provisions contains the Companies Act 2006 as well as the Insolvency Act 1986. Among the most significant laws of the Russian federation regulating groups of companies primarily belongs the Civil Code, the Law on joint-stock companies and the Law on limited liability companies.

The last section of the third chapter addresses the issue of the legal regulations of the de facto group and the groups of companies in general de lege ferenda. As a brand new bill on companies and cooperatives containing besides others the legal regulations of the groups of companies has been prepared by the Ministry of Justice of the Czech republic – I am trying to analyze some of the main points as I consider this bill to be quite a suitable alternative to the current provisions concerning groups of companies in the Commercial Code. Even though, some of the provisions inspired by the German system remain (for example the report on relations among the connected persons), the divergence from the German approach is obvious as the bill does not take over the hitherto different rules in case of the „de facto group“ and the „contractual group“ and provides for the same rules applicable for any group.

I am also giving some recommendation as to the possible changes and amendments to the bill, such as to add the definition of the group of companies, to subordinate the claims of the members of the group to the other creditors, to make obligatory for the managing person to provide the managed person with all the necessary information for the report on relations among the connected persons with possible sanctions for nonfulfilment of such an obligation etc.