

Title: Proposal for Insolvency Act amendments in order to establish equality status of creditors in the process of personal bankruptcy through debts charge off

Thesis summary:

The purpose of my thesis is to describe the new form of personal bankruptcy through debts charge off and point out some weaknesses of the current legislation together with some proposals how to deal with them. The reasons that led me to choose this topic are i) new legislation of Insolvency Act which is effective from January 1st 2008, and ii) my practical experience with insolvency proceedings.

The thesis composes from eleven chapters where each of them deals with particular phase of the process. Prior to the chapters there is an Introduction which describes the aim of the thesis, reasons for this specific topic and explanations of basic legislation related to personal bankruptcy.

Chapter One focuses on origination of the insolvency law in the territory of The Czech Republic and is divided into three subchapters. The first subchapter focuses on the development of insolvency law before the origination of Czechoslovakia, the second subchapter describes changes in the insolvency law from 1918 and the last subchapter deals with the former Bankruptcy Act.

Chapter Two clarifies basic changes that were introduced by the Insolvency Act and describes its amendments that were adopted since the effectiveness of the act.

Chapter Three contains four subchapters and is focused on the basic questions regarding the personal bankruptcy, such as conditions for the permission of the debts charge off, initiation of the proceedings and personal bankruptcy proposal decision options. The last subchapter deals with potential creditor's objections against debtor's personal bankruptcy proposal.

Chapter Four elaborates on how creditors can apply their claims in the insolvency proceedings and consists of six subchapters. The first three subchapters describe individual types of creditor's applications. The fourth subchapter focuses on reviewing the applications and is divided into three paragraphs that specify the rules for claims

authenticity denial. The fifth subchapter focuses on the creditor's liability for quality of claim applied and the last subchapter describes how to withdraw the application.

Chapter Five contains four subchapters and focuses mainly on debts charge off approval process and also describes individual ways for debts charge off (i.e. repayment schedule set by the court or realization of the debtor's estate). Definitions of the bankrupt's estate and disposition rights are included in the last subchapters along with the definition for common marital debts discharge.

Chapter Six describes the status of each creditor with respect to the kind of their claims and to the methods of the debts charge off. This chapter contains three subchapters.

Chapter Seven is divided into five subchapters and presents the rights and duties of the insolvency trustee in the process of debts charge off, including possibilities of trustee removal or rules for trustee's fee setting.

Chapter Eight analyzes the consequences of the debts charge off termination. The first three subchapters explain how the personal bankruptcy could be terminated (i.e. declaration of the debtor's bankruptcy in case of breaching some of the conditions, unpaid obligations discharge). The fourth subchapter focuses on after the discharge status of the debtor and the fifth one deals with the court opportunity to withdraw the discharge.

Chapter Nine is divided into two subchapters and focuses on the effects of the insolvency proceedings particularly the personal bankruptcy on the other proceedings such as execution or probate proceedings.

Chapter Ten relates to insolvency proceedings risks for creditors.

Chapter Eleven, being the last one, focuses on the main purpose of the thesis and in four subchapters proposes 4 specific changes that the Insolvency Act shall be amended with in order to achieve balanced secured creditor position in the insolvency proceedings.

Conclusions are drawn in the closure of the thesis. That chapter summarizes the value added brought by the introduction of the Insolvency Act as well as it reflects on the increasing number of personal bankruptcies in the past two years.

Key words:

- Insolvency Act, personal bankruptcy, secured creditor