

## **Abstract – Companies in Private International Law**

The purpose of this diploma thesis is to examine regulation of companies in private international law in the Czech Republic and also from the European Union law perspective. The thesis is divided into four main chapters.

First chapter provides a brief definition of the basic legal concepts that are central to this thesis - definition of a company and definition of a private international law.

Second chapter explains the concept of *lex personalis* and two opposing conflict of law theories, which link companies to a certain system of law; the incorporation theory and the real seat theory.

Third chapter focuses on the relevant Czech legislation, especially on the Czech Commercial Code, which contains provisions on determining *lex personalis* of a company as well as rules on cross-border transfer of seat of a company. Forthcoming re-codification of private law in Czech Republic is also discussed with regard to the regulation of companies in private international law.

Fourth, the most extensive chapter of this thesis describes and analyzes the European Union law relating to the freedom of establishment of companies. First, the very concept of freedom of establishment is explained with references to primary EU law. Subsequently, six landmark decisions of the Court of Justice of the EU are presented and also one case still pending before the Court, that is likely to further influence the scope of the freedom of establishment. Regulatory competition and Delaware effect, as one of the consequences of the case law of the Court of Justice of the EU, are also examined. Secondary EU legislation relating to the freedom of establishment was also reviewed, with a main focus on 14<sup>th</sup> directive on cross-border transfer of the registered office.

Conclusion contains author's own opinions and several suggestions regarding the examined regulation. It is argued that although the real seat theory was not completely overruled by the Court of Justice of the EU, it has lost all of its justification in the EU. It is also believed that until all Member States will adopt national legislation that permits cross-border transfer of registered office without the need of prior winding up and subsequent reincorporation of companies, European Commission should submit proposal for 14<sup>th</sup> directive.

**Keywords:** companies in private international law; incorporation theory; real seat theory; cross-border transfer of seat, freedom of establishment.