

Abstract:

Discharge of debts in case of community property

Debt discharge is in Czech legal order relatively new legal institution and its application still gives rise to a number of questions and doubts. This work primarily focuses on situations when the discharge of debt concerns the community property. It means on one side the common discharge of spouses and on other hand discharge of debts of married debtor, whose spouse did not petitioned to permit debt discharge.

We also concentrate on personal scope of debt discharge institution, mainly because it is not clear, whether the entrepreneur can also take advantage of debt discharge, or not.

Further we would like to point out that present valid and effective articulation of the Insolvency Act does not include institution of common debt discharge of spouses, which has been created by insolvency courts but its application has not been unified. It is also not clear how would be the spouse of debtor who filed a petition to permit debt discharge and their community property affected by the discharge procedure, when the spouse of the debtor is not party to a case.

We also deal with a problem, how should creditors file the applications of the receivables against the spouses and how to review these receivables, when the statutory regulations are missing and the case law is either inconsistent or does not exist.

Imperfect statutory regulations and often contradictory case law undoubtedly has a negative impact on legal safeguard of debtors, spouses, who can not predict the consequences of the opening of insolvency procedures on their community property.

In this dissertation we highlight deficiency in actual statutory regulations and case law and we try to propose a solution of problems when the debt discharge concerns the community property either in the case of individual discharge of spouse or in the case of common discharge of spouses.

We also take into account proposed amendment to the Insolvency Act, which is currently being discussed by the Parliament of the Czech Republic and which solves many of the current problems by incorporating the new institution of common discharge of spouses to the national legal order.