

Selected problems of application of the Insolvency Act

On the 1st of January 2008, Act No. 182/2006 Coll. on Insolvency and its Resolution (Insolvency Act), which constitutes the substance of current legal regulation of bankruptcy law in the Czech Republic, came into force. There was a need to adopt new regulation emerged not only as a result of obsolescence of the original regulation, which – despite numerous direct or indirect amendments – was not able to respond adequately to economic changes, but also due to the necessity to adjust bankruptcy law to European legal regulations. The Insolvency Act together with implementing regulations form the basis of an entirely new and complex legal regulation which stands on its own principles, introduces uniform insolvency proceedings for all kinds of resolutions of insolvency and also new forms of insolvency resolutions. In addition to bankruptcy as a traditional and liquidating form of insolvency resolution, the Insolvency Act introduces a reorganisation and a discharge of debts as preservation methods of insolvency resolution which might be more profitable both for the debtor and his creditors. Reorganisation is designated for entrepreneurs, while discharge of debts was adopted as a resolution of state of insolvency of non-entrepreneurs.

But this current legal regulation of bankruptcy law has a lot of imperfections that make its practical application difficult. In this dissertation I try to select the most problematic parts of current regulation and put this regulation to the test.

The purpose of the study is to refer to the most serious problems of application the Insolvency Act and suggest possible solution of these problems.

I chose this topic because I have two years long experience with work for insolvency administrator and I have to solve plenty of problems during this time that weren't defined in Act. Because of that I have a lot of topics and practical problems that should be used in this dissertation.

The study is composed of nine chapters, each of them dealing with different aspects of current issues of bankruptcy law. Chapter One is introductory and defines the bankruptcy law in the Czech Republic. The chapter is subdivided into three parts. Part One explains what the bankruptcy is. Part Two deals with methods which can be used for solution of bankruptcy. Part Three then describes individual proceedings about these methods.

Chapter Two is focused on the problem of the reward of insolvency administrator. In this chapter I conclude that current legal way to reward insolvency administrator may be in the conflict with the Constitution.

Chapter Three deals with obligation of insolvency administrator to conclude insurance against damage which he can do. In this chapter I point out the decision of the European Court of Human Rights which can make this obligation useless.

Chapter Four looks at definition of the secured creditor. There I point out that definition used in the Act is far more complicated than it looks like.

Chapter Five is focused on obligation to inform the known creditors. Here I suggest to establish this obligation in the larger scope than it is now. My suggestion follows from experience that there are many small creditors that lost their claims because they do not know about the bankruptcy proceeding.

Chapter Six deals with possibility of combination two ways of discharge of debts together. Resolution of these considerations is that it is possible but not in strictly legally way.

Chapter Seven points out the biggest problem of application of Insolvency Act which is the common discharge of debts for marriage couple. In this chapter I describe the procedure which is used now and point out its biggest problems. At the same time I offer several possible solutions.

Chapter Eight deals with possibility of discharge of debts for entrepreneurs. Although the Act does not allow this proceeding, some Courts have different opinion and they allow this method for solving bankruptcy of entrepreneurs.

In Chapter Nine I propose the possible change in jurisdiction of bankruptcy proceeding and I point out the advantages and disadvantages of the suggested change.

The main aim of the thesis has been reached. I suggest that an amendment should be passed and courts should better apply the legislation.