

My thesis relates to the action for liability due to lack of assets in French law and further deals with this institute in the Czech Republic as it can be found in § 68 of Business Corporations Act. Along with the common legislation of liability, I present the institute of *faute*, which is unknown to Czech law and I describe the French national legislation of the action for liability due to lack of assets. The Czech legislation, which addressed the form of the institute when creating the Business Corporations Act yields an interesting comparison given French law has long incorporated the tradition of the institute. To finish, my thesis deals with the amendment of Business Corporations Act as proposed by the Ministry of Justice in the end of 2016 and which is only at the beginning of the legislative process.

In France the institute represents a special type of liability that can be established to statutory bodies when there is lack of assets. In the Czech Republic it is a special type of guarantee that can be established for a member or a former member of the business corporation's statutory body.

The differences between the French and Czech legislation are mainly based upon the manner in which the fulfillment of the obligation by the statutory body is made. In France the statutory body's fulfillment goes directly to the assets of the company and it is from there the creditors of the company will be satisfied. In the Czech Republic the fulfillment goes directly to the creditors of the company and can therefore result in establishment of an uneven redistribution of the company's obligations. Another difference arises from a different interpretation of company members from which the institute applies only onto statutory body members who have the duty of due care and due diligence. It is not certain yet how the institute in the Czech legislation should apply to influential or controlling entities which are not bound by the obligation of duty of due care and diligence. My thesis further deals with the question to what extent the procedure based upon § 68 of Business Corporations Act is independent on insolvency proceedings and I have come to a conclusion that due to the deficiency of our legislation, the courts which are competent for the insolvency proceedings are not competent for this action.

I have found that our legislation lacks clarity in many aspects of the institute of § 68 of Business Corporations Act. We may most likely expect the courts to create a more consistent and certain view on this matter in the future, but I do not think it should have been necessary from the beginning. The aforementioned legislative amendment which is only at the beginning of the legislative process abandons current position of the Business Corporations Act to

overcome its weaknesses and also more closely resembles the French law. I have come to the conclusion that the adoption of the amendment might eliminate current problems, but it will give rise to new issues, which may also result from lacking the huge body of case law from the *Cour de Cassation* which accompanies the institute in France. I think the concept as established by the § 68 of Business Corporations Act in force might continue, but it would require an amendment very carefully considered. Nevertheless, I welcome the tendency to adopt the French model more or less as is and I do think we would only benefit from the proposed amendment.