

Doctoral thesis: Law of concern groups and financial conglomerates

Abstract

The thesis analyzes the law of groups and financial conglomerates and is divided into three approximately equal sized blocks forming the puzzle in the form of a pyramid. Without understanding the supporting base made up of institutes of concern law, especially the terms of control, concerted practices and unified management, you can not move to the upper floors of qualifying holdings and close links to the top of the pyramid, which balances on the complicated definition of a financial conglomerate. In the spirit of this difficult journey up, the work is designed and its main objective is not only the clarification of the subject, especially the regulation of the financial conglomerate, which has so far not been the subject of a detailed literary exploration, but also the considerations *de lege ferenda* on weaknesses and strengths of the current Czech regulation of groups and financial conglomerates.

In the first part it deals with the terminology of concern law, clarifying terms especially the business group, the majority shareholder, control, parent and subsidiary entity versus controlling and controlled entity, acting in agreement, the concern and its types. A large space is devoted to the definition of the decisive influence which defines a control and disprovable and irrefutable legal presumptions of a control. The thesis also analyzes different forms of controlling influence and their differentiation from a unified management, which already belongs to the defining features of the concern. The thesis deals shortly with the factual and contractual concern, as these areas have already been described in detail by other authors.

The second block of this thesis provides the most comprehensive and faithful view of the group, ie excluding commercial regulation of group contained in the first block mentioned above, it examines also international, community and public aspects of the group. From an international and Community perspective, legal regulation of groups is only partial and fragmented. The thesis deals mainly with the question of which law will govern the relationships in an international concern group if the companies of the group are governed by various personal statutes, both concern the factual and contractual. The thesis also briefly describes the current state of Community law of groups and contemplates its future development.

From the perspective of public law, the thesis analyzes the three main areas where the public elements intertwined with the private regulation of groups and due to this conflict there are certain modifications, respectively supplements of the general regulation of groups.

The first area is the application of the concern law to relations between private and public law entity, respectively to relationships between public entities themselves. The second area describes the

existence of concern groups from a competition perspective and analyzes mainly the differences between the group term „control“ and the competition term „control“. The third area is a specific regulation of groups among regulated entities operating in the financial market which includes, among other key terms of a qualifying holdings and close links. This regulation is already a connecting link between concern law and financial conglomerate law.

The third block of the thesis deals with the regulation of financial conglomerates, using terminology and context of the previous two blocks, so the thesis generates a compact unit. Legal regulation of financial conglomerates is relatively new and quite complicated, because it is not only about a connection of the group legislation and regulation of the financial market, but also about a connection of the sectors of the financial markets and their specific regulations. Financial conglomerate is a response to globalizing tendencies in the financial market of creating large, inter-sector groups that could cause destabilization of the financial system as a whole and cause a damage to clients in a variety of sectors of the financial market. The main objective of this legislation was therefore control measures for financial groups that deal with cross-financial activities among the various segments of the financial market and to ensure adequate protection of their clients.

Compared with traditional concern groups, financial conglomerates differ primarily in the existence of at least two regulated areas of the financial market (and the existence of the related specific legislation according to a specific segment of the financial market, which is to be applied together with a "general basis" given by the concern law) and in often global activities of such financial group to which it is connected a need to deal with international legal issues, respectively community legal issues. A group of a financial conglomerate is then a broader term than a concern group because it consists not only of the controlling entity and its controlled entities, but also of the affiliates or other persons of the financial sector, subject to the conditions set by law. The term of a concern group is narrower than a financial conglomerate, as it involves only a parent company and its subsidiary companies subjected to its unified management. The substantial difference between both regulations is the fact that an entity may be a member of more than one group within the meaning of financial conglomerates (but not concern groups).

The thesis details the legal terminology of financial conglomerates, especially discusses the key terms as regulated person, group, association, significant influence, participation, control, financial sector, banking sector, investment services sector, insurance sector, mixed financial holding entity, assets, scales of significance, coordinator, supplementary supervision, etc. Subsequently, the thesis describes a procedure determining the group as a financial conglomerate and then the role and functions of the coordinator. In the final part, the thesis details the supplementary supervision of financial conglomerates comprising mainly additional requirements on capital adequacy, risk concentration, intra-group transactions, internal control system, personnel requirements and reporting obligations. The thesis is completed with the reflection on prospective changes in the law of financial conglomerates.