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Public Offering of Securities

Abstrakt v anglickém jazyce

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Mgr. Jan Mikuláš

Školitel: Prof. JUDr. Stanislava Černá, CSc.

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Public offering of Securities

Dissertation thesis focuses on public offering of securities according to the Czech Law, USA Law and German Law. The first part of the dissertation thesis describes the definition of securities and basic types of securities according to the Czech law. Subsequently, new types of securities like derivatives are described in more detail. Following part of the dissertation thesis analyzes interpretation of the term „security“ according to the USA Securities Act of 1933. This part of the dissertation thesis covers the most important case-law such as SEC versus W.J.Howey Co., SEC versus Koscot Interplanetary, Inc. or Landerth Timber Co. versus Landerth.

The main part of the dissertation thesis is concerned with the legal regulation of the public offering of securities. Especially the definition of the public offering is more closely analyzed, while as the basis for the definition the German professional literature and commentaries regarding prospectus and public offering according to the German Law and EU Law were used. Further inspiration for the Czech interpretation of the term public offering was the case-law of the Supreme Court of the USA.

Since the public offering law is harmonized in the EU according to the Prospectus Directive No. 2003/71/EC, the interpretation of basic terms and duties of the issuer should be uniform. Because of the lack of case-law or interpretations of Czech public offering law, German case-law and interpretation of the BaFin and German Commentaries regarding German Prospectus Act (WpPG) are very useful inspiration for the Czech Law. Therefore the main part of the dissertation thesis is focused on the German Law.

The dissertation thesis deals with some instruments and special forms of protection of small investors, which are unknown to the Czech Law. Comparing the extent of the protection

of small investors according to the USA Law or German Law, we have to conclude that this protection according to the Czech Law is insufficient. Especially the inclusion of the investment contract under the definition of security according to the USA Securities Act of 1933 or the German Sell-Prospectus Act (Verkaufsprospektgesetz) provide to the investors in USA and in Germany wide protection by more types of investments regardless of the form of the investment. Contrary to this, Czech Law is strictly limited only to investments into securities as understood according to the Czech Law. As a result, investments in other forms (e.g. Limited Liability Company or Company of Civil Law) are not protected.

Since the Czech capital market is still very undeveloped, there is a lack of appropriate investor`s protection. This dissertation thesis offers some inspiration for the Czech Public Offering Law *de lege ferenda* and some inspiration for interpretation of many provisions of the Public Offering Law and duties and rights of the involved parties like issuers or entities or persons liable for the public offer of securities and content of the prospectus.