

Abstract

The world is getting globalized and more connected than ever. Business is being done internationally, contracts are closed between legal subjects from different countries and international companies represent powerful market forces. Changed situation brings new challenges for the legal regulation of such phenomena. International private law deals with legal issues connected to different laws and determines the applicable law.

There are two diverging theories concerning applicable company law, the real seat doctrine and the incorporation doctrine. The real seat theory requires a company to be subject to the law of the state in which its effective centre of administration is located. The real seat doctrine is considered protective, because it safeguards the rights of stakeholders such as minority shareholders and creditors. If a company changes its centre of business, if it moves its decisive activities to another country, the applicable law will change. Consequence of the change is that the state applying the real seat principle does not recognize legal capacity of such a company. The incorporation theory determines the applicable law by reference to the state in which the company was established or registered. It is assumed that incorporation theory leads to the race to bottom in company law. I follow these arguments, the advantages and disadvantages of both theories and I also show how Czech law reflects and applies these doctrines.

One of the most important aims of the European Union is to create a common market and it shall be achieved through four freedoms of movement. The Treaty on the Functioning of the European Union prohibits restrictions on the freedom of establishment of companies of Member State in the territory of another Member State. The Member States adhere both to the incorporation doctrine and to the real seat. According to the recent chain of decisions of the Court of Justice of European Union there may be a conflict between effects of real seat and the freedom of establishment. In my diploma thesis I analyse the influence of judicatory of the Court of European Union on the applicable company law and the possibility for companies to transfer its seat without liquidation and re-establishment as a new entity. I describe the recent development in European law in the scope of international private law of companies including the 14th Company Directive.