

Dissolution of a limited company with liquidation; the assignment of rights and enforceability of obligations

Abstract

The diploma is concerned about the issue of the enforceability of commitments and the cessions of rights, especially with regard to the shortening of creditors' rights in the event of winding up a corporation, during a liquidation or insolvency process.

The diploma does not attempt to analyze in detail the process of liquidation or eventually the process of insolvency, but chooses the specific problems and procedures that are applied to meet the needs of a shareholder corporate model, which means to enrich the ownership structure to the maximal potential extent, including in this procedure the influential and controlling persons who in some way manage to influence decision-making process in the corporation at the expense of creditors.

The introductory chapter gives a general description of the liquidation process, including regulations which apply to it.

The comparison of foreign legislation, mainly focusing on the law applied in the United Kingdom from which the Czech legislation was also inspired by, is important with regard to legal proceedings of subjects acting on behalf the corporation, especially in case of a liquidator acting in the process of liquidation, furthermore it is important with regard to the definition of legal responsibility or liability which relates to the liquidation process of a corporation, eventually to the insolvency proceedings.

Comparison of insolvency with bankruptcy, which the diploma also deals with, is equally important, since both institutions are interrelated, particularly in case of the issue of the enforceability of the obligations and rights cessions.

The diploma later on focuses on specific issues which govern the termination of business of the corporations, including the difficult tasks that the liquidator must fulfil in the winding up process such as selling the property and other property rights of the corporation. However, the main focus is on the issue of reduction of creditor rights and the avoidance to fulfil its obligations, whereby the corporations use a range of institutes, especially running the business through foreign trade corporations, which here they do establish branches. Moreover the diploma focuses on the other ways how to fraud the creditors, comprising vested proxies

to persons who act on behalf of a corporation with their limited personal liability, furthermore, including the cessions of shares to the so-called "rat holes"

Recodification of private law, which has come in effect since 1.1 2014 reflects the above situation, for example, the possibility to make directly liable and responsible the members of the statutory body another executive body and the shareholders of a corporation. The possibility of exclusion a member of the statutory body or the chance to relate the legal liability to the entities involved in a concern. On these and other provisions, which are as a whole in some way revolutionary, the diploma has taken a closed focus, however in some cases the diploma is rather critical suggesting the new proposals *de lege ferenda*.