

Debtor-in-possession financing

Abstract

The topic of this thesis is debtor-in-possession financing. Debtor-in-possession financing, albeit not being a topic of a vast interest in the Czech insolvency theory, has rightful place in the insolvency law. By acquiring new financial proceedings, resources, energies or other benefit, debtor earns a chance to preserve or restore the operation of its business, while bringing a possibility of higher satisfaction of the creditors' claims mainly because new financial proceedings may help the debtor to generate new earnings that can be used to satisfy creditors' claims.

The aim of the thesis was to evaluate contemporary legal framework of the debtor-in-possession financing, its doctrinal interpretations, court practice and recent topics that has occurred in the global context. The thesis brings a *de lege ferenda* reflections based on critical analysis of abovementioned sources.

The thesis comprises of the introduction, eight chapters divided into subchapters and conclusion. The first chapters brings theoretical basis of the thesis by distinguishing the terms insolvency, loan and debtor-in-possession financing. The second chapter contains the description of the purpose of the insolvency law, its principles and in particular cases it explains the relation between such principles and the debtor-in-possession financing. The third chapter describes a brief history of the debtor-in-possession financing in the Czech insolvency law, and explains the debtor-in-possession financing theoretically, especially its theoretical purpose. This is the end of the part of the thesis that was devoted to the theoretical basis of the work. The core of the thesis starts with the fourth chapter. The fourth chapter contains detailed analysis of the particular features of the debtor-in-possession financing that are set out in the Czech Insolvency Act. These are purpose of the debtor-in-possession financing, type of contract envisaged by the law, the contract being entered into by the person eligible to, e.g. debtor-in-possession or insolvency trustee, consent of the creditors' body and standard terms of the debtor-in-possession financing. Remarkable theoretical issues such as contracts equal to the loan agreement, concept of the creditors' body consent or terms of the debtor-in-possession financing are set out in this chapter. The fifth chapter focuses on the assets obtained from the proceedings of the debtor-in-possession financing. The sixth chapter describes the nature of the debtor-in-possession financing claims that are rated as the estate claim and are given the so called super-priority in the rank of creditors' claim. The seventh chapter compares the debtor-

in-possession financing in the Czech insolvency law and jurisdictions of the Slovak Republic, the Republic Poland and the Republic of Croatia. These three compared countries have gone through a similar economic transition as the Czech Republic, and faced the adaptation of their respective legal frameworks to the principles of free market economics, including the insolvency law. The last, eighth, chapter contains *de lege ferenda* analysis including disputation with the concept of the creditors' body consent.

Key words:

insolvency; insolvency proceedings; debtor-in-possession financing; rescue financing