

Insolvency torts of members of the statutory body of a business corporation after a major amendment to the Commercial Corporations Act

Abstract

This work, Insolvency torts of members of the statutory body of a business corporation after a major amendment to the law on business corporations, focuses first on the institutes of care of good stewardship and business judgment, which are the key basis for the application of penalties for insolvency torts. Furthermore, this work discusses the issue of insolvency torts and their penalties before the major amendment to the Business Corporations Act and their adjustment after this amendment. The aim of the thesis is to introduce the reader to the issue of insolvency torts and their penalties, then to evaluate both of these adjustments and compare their most fundamental changes. In this context, the work also includes the elaboration of the most relevant case law to date, which will be strongly reflected in future decisions on the application of penalties for insolvency torts, as amended, especially in matters of due diligence and business judgment.

At the same time, this work contains the elaboration of the most fundamental questions that often arose during the application of penalties for insolvency torts before the amendment and whether and possibly what solution was reached in this regard and whether or not how these problems may be reflected in the new regulation. The departure from the inspiration of the British legislation of wrongful trading, which regulated the sanction liability to the current regulation of the action to replenish liabilities, the origin of which can be found in the French legislation, according to which it is now translated into an action to replenish assets, brought fundamental changes and new issues whose solution can be inspired by the rich case law of the French courts, which in its current form have dealt with the institute of actions to supplement assets since 2005.

Given the current lack of clarity and contradictory interpretations of these institutes, this amendment is very welcome, but it would also be worth the attention of the legislator to tighten the rules for accounting and overview of legal proceedings for the company, which often reach insolvency administrators confusing or incomplete and application of these penalties for insolvency torts is thus often very difficult from a practical point of view.

Klíčová slova/ Key words:

Insolvency torts, action to supplement liabilities, clawback, disqualification, care of a proper manager, business judgment