

# **Assessment of the creditworthiness of a consumer in insolvency proceedings**

## **Abstract**

This diploma thesis deals with a creditor's obligation to assess a consumer's creditworthiness with due professional care before concluding a consumer credit agreement, or alternatively amending such an agreement consisting of a significant increase in the total amount of consumer credit imposed on the consumer credit provider by Act No. 145/2010 Coll., on consumer credit, or Act No. 257/2016 Coll., on consumer credit. Enshrining this obligation in the aforementioned laws is one of the manifestations of consumer protection in our legal system. The primary goal of this obligation is to protect the consumer, who, compared to consumer credit providers, certainly lacks professional, and in particular legal and economic, knowledge and experience in the field of consumer credit provision, as well as being materially and personally equipped as regards disproportionate and reckless borrowing. Over-indebting of households negatively affects not only the consumer as an individual, on whom the negative consequences fall existentially, but also the Czech Republic as a state, and ultimately also creditors from consumer credit contracts, i.e. ultimately they are also protected by regulation and compliance with the obligation of providers to assess the consumer's creditworthiness.

In this thesis, the emphasis is placed on the review activity of the insolvency administrator regarding creditors' claims from consumer credit contracts. The law does not define the obligation to assess the consumer's creditworthiness with professional care on a case-by-case basis, and some disputed questions of the interpretation of the law must therefore be left to the decisions of higher courts, which are gradually supplemented, and whose conclusions the author respects in the thesis. In this thesis, special attention is paid to the consequences in insolvency proceedings of failure to fulfil the obligation to properly assess the creditworthiness of the consumer.

The entire thesis has been divided into 5 chapters, with an introduction, and a conclusion. The first two chapters aim at familiarizing the reader of this thesis with the basic relevant concepts and institutes, and the third chapter compares 3 significant legal provisions related to the provision of consumer loans. The fourth chapter is the core supporting chapter, which focuses on the obligation of consumer credit providers to duly

assess the consumer's creditworthiness, and also on the possible negative consequences for the creditor in a claim for insolvency proceedings, based on a consumer credit agreement, before the conclusion of which this obligation was not fulfilled, i.e. in particular, the denial of such a claim by the insolvency administrator due to the invalidity of the consumer loan agreement for failure to fulfil the provider's obligation to properly assess the creditworthiness. In the fourth chapter, the conclusions related to the researched issue are presented, which are based on statistical data obtained by the author, based on publicly available information in the insolvency register. In the fifth chapter, the author of the thesis reflects on possible changes to the applicable legislation.

**Key words: Consumer credit, assessment of consumer creditworthiness, insolvency proceedings**