

Status of a secured creditor in insolvency proceedings

Abstract

This thesis focuses on the analysis of the insolvency proceedings from the perspective of the secured creditor from its commencement to its conclusion, with the aim of assessing the effectiveness of the applicable legislation and the position of the creditor in the insolvency proceedings. The thesis does not deal with a comprehensive analysis of the position of the secured creditor, but focuses on the key milestones of the insolvency proceedings and related interpretative ambiguities.

The interpretation and application of these provisions are often problematic and require a deeper understanding of the basic legal principles of insolvency law. This paper aims to clarify these problematic areas with reference to relevant case law.

The thesis assumes that creditor behavior is based on the economic theory of human behavior, which is based on the assumption of rational behavior and the desire to maximize one's own benefit. The thesis consists of five main chapters.

The first chapter focuses on the general meaning of creditors in the context of insolvency proceedings and the requirement for their plurality that arises from the definition of the shared goods problem. Next, the institute of secured creditor under Section 2(2)(g) of the IZ, which has a selected security institute in relation to the property belonging to the estate, is defined in detail. Furthermore, the special case of a secured creditor pursuant to Section 166 IZ and a secured creditor pursuant to Section 167(2) IZ, whose status arises due to an enforceable claim as a result of the commission of a criminal offence, were defined. The second chapter describes the consequences of the opening of insolvency proceedings for the secured creditor. The third chapter deals with the application of the secured creditor's claim and the claims review process.

The core part of the thesis is chapter four dealing with the issue of satisfaction of secured claims. The process of satisfaction of the secured creditor has been gradually described in bankruptcy, insolvency and partly in reorganization. The role of the secured creditor during the satisfaction process has been described, in particular in the case of bankruptcy, the proper subject matter of the collateral, the limits of the secured creditor in granting the administration order and monetization have been discussed. In the case of insolvency, some differences in the regulation of instructions compared to bankruptcy were discussed. The chapter discussed in detail the issue of the proceeds of the monetization from which, as it turned out, quite a lot of items can be

deducted before its final issue to the secured creditor. In the context of the satisfaction and position of the secured creditor in the reorganization, the secured creditor's position in the approval of the reorganization plan, where it acts as a separate group of creditors, is particularly relevant from the secured creditor's perspective.

The fifth and final chapter focuses on the position of the secured creditor after the insolvency proceedings have ended. In addition to the position of the secured creditor after the end of the insolvency proceedings in cases where the claim has not been filed at all, situations where the secured claim has not been fully satisfied are also discussed.

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