

Insolvency delicts under the Business Corporations Act

Abstract

The thesis deals with the very up-to-date topic of insolvency delicts under the Business Corporations Act, the legal regulation of which has undergone fundamental conceptual changes in recent years. The amendment of Business Corporations Act (the “amendment”)¹ brought a completely new form of the *actus reus* of the insolvency delict, which unified the previously disparate and unjustifiably differentiated legislation. In this context, the procedural aspect of the legislation has also been redesigned by introducing joint proceedings on insolvency delicts, which are now a part of the insolvency proceedings. Additionally, the regulation of insolvency sanctions as liability consequences for the commission of a insolvency delict has also been clarified, with the former sanction of liability for the debts of a bankrupt business corporation being completely replaced by a whole new concept of “liability for lack of property” inspired by French law.

These changes to the legislation are set out in the context of the objectives pursued by the amendment and in the light of the general meaning and purpose of the legislation, which is, in particular, to protect the property interests of the creditors of the bankrupt business corporation. The interpretation is therefore directed primarily at the evaluation of the protective function of the legal regulation of insolvency delicts and their compensatory purpose with respect to the assets of the bankrupt business corporation, and mention is also made of the fulfilment of the public interest in sanctioning the responsible persons.

For the purpose of this interpretation, the work is divided into three systematic parts, where the content of the first part is mainly a determination of the definition and interpretation of the current form of the *actus reus* of the insolvency delicts and a comparison with the original legislation before the amendment. The second part is devoted to the procedural aspect of the sanctions for insolvency delicts, where, similarly to the first part, the current form of the procedural regime is also defined in comparison with the previous legislation. In the last part, attention is paid to individual insolvency sanctions, especially with regard to the changes in their concept brought about by the amendment, again without missing a comparison with the previous legislation. Emphasis is placed on the assessment of their effectiveness, in the case of liability for lack of property and the sanction of the return of profit on the assessment of their compensatory

¹ Zákon č. 33/2020 Sb., kterým se mění zákon č. 90/2012 Sb., o obchodních společnostech a družstvech (zákon o obchodních korporacích), ve znění zákona č. 458/2016 Sb., a další související zákony.

function, and in the case of the sanction of disqualification, in particular on its preventive purpose and the fulfilment of the public interest.

All the findings are assessed, in particular, in regard to the position of the creditor, to whose protection the legal regulation of insolvency delicts, after all, ultimately aims.

Key words: Insolvency delicts, liability for the bankruptcy of a business corporation, statutory body