

Appointment of an insolvency practitioner in insolvency proceedings

Abstract

The main objective of this thesis is to comprehensively analyse the process of appointing an insolvency practitioner in insolvency proceedings. The opening chapter of the thesis presents the historical research of different systems of insolvency practitioner appointment, being the prerequisite for the further analysis. The second chapter determines the role of an insolvency practitioner within the judicial system, which appears to be crucial for identifying objections to current regulation and proposing suitable approaches. This chapter contains an analysis of the very definition of an insolvency practitioner, the linear timeline of the performance of this office from licensing to delicensing, classification of insolvency practitioners, identification of supervisory authorities, and the model of state liability for the performance of insolvency practitioner's office. The second chapter further provides the detailed analysis of the public-service dimension of the insolvency practitioner's office, and the foreign legislation establishing heterogeneous insolvency administration schemes. The first two chapters are systematically proceeded by the analysis of the legal framework of the process of appointing insolvency practitioners, identifying the basic elements and deficiencies of the nomination-based and rotation-based schemes. The third chapter also provides the analysis of the general process of insolvency practitioner appointment, also indicating some deviations such as the so-called nomination exceptions in the broader sense. This chapter further analyses the possibility of the insolvency practitioner replacement, namely the revocation and dismissal of the insolvency practitioner, and the exercise of the creditor's right to replace the insolvency practitioner. The fourth chapter elaborates on the theoretical and practical problems identified in the previous chapters. In order to demonstrate the deficiencies of the rotation-based appointment scheme, a case study of the delicensing of Administrace insolvenčí City Tower, v.o.s. is undertaken, along with a quantitative and qualitative analysis of this case. The case study is further linked to the re-enlistment of insolvency practitioners to the rotation-based system. The fourth chapter provides the analysis of further problematic aspects of the current selection scheme, such as the re-appointment of insolvency practitioners by the creditors, uneven distribution of cases and failure to take into account different types of insolvency practitioners, or the so-called shadow licenses generally associated with the corporate insolvency practitioners, i.e. the unlimited liability companies.

Key words: insolvency practitioner, rotation scheme, appointment of insolvency practitioner