

Bankruptcy, imminent bankruptcy and coverage gap

Abstract

In the presented diploma thesis, I deal with the main institutions of insolvency law, which are bankruptcy and imminent bankruptcy. There are two forms or reasons for bankruptcy, namely insolvency or over-indebtedness.

I tried to explain the imminent bankruptcy on the basis of a brief legal provision with the help of the literature I used. In my thesis, I emphasize the legislator's efforts regarding the newly adopted legislation for the benefit of active and honest potential debtors. I mentioned the newly adopted norm of the preventive restructuring act.

The above forms of bankruptcy can be detected by bankruptcy tests. In the case of insolvency, it is a liquidity test, and in the case of over-indebtedness, a balance sheet test. Insolvency and over-indebtedness have a common condition in the form of at least two known creditors of the debtor. In other aspects, it differs in persons, where over-indebtedness is determined only in the case of an entrepreneur. Another difference is the different inclusion of payable or non-payable liabilities when determining bankruptcy.

In my thesis, I present ways of solving bankruptcy, which are either liquidation or rehabilitation. The first-mentioned way is represented by a bankruptcy declaration, and the rehabilitation way covers reorganization and debt relief. In my thesis, I further specified these ways, especially with regard to the type of debtor, i. e. whether it is a natural or legal person, an entrepreneur or a non-entrepreneur, but also with regard to the "size" of the debtor, only in the case of an entrepreneur.

The coverage gap, which is also the topic of the thesis, is included in the section dealing with ways of solving bankruptcy. Although the ways are exhaustively defined in the law, the use of this relatively new institute can prevent the use of any of them in other parts of the insolvency proceedings. In my thesis, I mainly deal with the coverage gap through the implementing regulation issued for this institute.

The practical part of the thesis consists of case studies, where I demonstrate the specific course of insolvency proceedings on five cases. These cover the bankruptcy of a financial institution and two commercial companies, one of which is already going through a bankruptcy declaration, and the other, at the time of writing this thesis, is before a decision on how to resolve its bankruptcy. Solving the bankruptcy of two natural persons by means of debt relief represents a successful approval of debt relief with the monetization of the assets and fulfillment

of the repayment schedule, and in the second case, at the time of the conclusion of this thesis, the natural person was waiting for the approval of the already permitted debt relief.

The chosen processing methods for the theoretical part of the thesis are interdisciplinarity, deductive approach, synthesis and comparison. For the practical part, I chose the analysis method. The methods used in the theoretical part of the thesis enable the search for information on a certain issue based on a specified search query for working with professional literature. The analysis enabled me to analyze specific documents in publicly accessible registers, to study the interviews and comments on the topic and specific literature.

The result of the thesis is the conclusion that insolvency law is a dynamically developing field on the border between law and economics. Another interesting element is the variety of its participants (debtors), from small consumers with obligations in the lower hundreds of thousands of CZK and, on the other side, for example, a commercial company equipped with a sophisticated legal apparatus with obligations of more than tens of billions of CZK. Judges in the insolvency agenda work in such a professionally extensive range of individual cases.

Key words: bankruptcy, debtor, creditor