



October 2012

Amendment to the Insolvency Act

On 1 November 2012 an amendment to the Insolvency Act introducing some measures against abuse of insolvency petitions becomes effective.

Rejection of an obviously ungrounded insolvency petition

Newly, the court shall immediately, within 7 days of its filing at the latest, reject (i.e. not deal with) also an insolvency petition which is obviously ungrounded. An insolvency petition is obviously ungrounded if, e.g.,

(i) the insolvency petition has been filed repeatedly and the insolvency petitioner has not proved that it fulfilled the obligations imposed on it by the previous decision on the insolvency petition, as the case may be; or

(ii) by filing of the insolvency petition, the insolvency petitioner obviously intends to abuse its rights to the detriment of the debtor.

Provided that the court rejects an obviously ungrounded insolvency petition, the court may, at the same time, impose a fine up to CZK 50,000 on the debtor for filing such petition.

Security for compensation of damage caused by ungrounded insolvency petition

By a preliminary measure, the court may impose the obligation on the insolvency petitioner (i.e., on a natural person or a legal entity who has filed the petition for commencement of the insolvency proceedings against the debtor) to provide security for compensation of damage or other detriment which might be caused to the debtor as a result of the ungrounded opening of the insolvency proceedings and measures taken in its course.

The insolvency court may impose the obligation to provide the security on the insolvency petitioner only upon the debtor's request made together with the first act the debtor is entitled to following the commencement of the insolvency proceedings and, at the same time, if the debtor documents that such damage or other detriment apparently threatens to the debtor. The obligation to provide the security may not be imposed on an insolvency petitioner who is an employee of the debtor and his/her receivables from the debtor consist only in labour law claims.

If, in the course of the insolvency proceedings, it becomes apparent that by the fault of the insolvency petitioner a damage or other detriment has been caused to any person (i.e., not only to the debtor) as a result of the commencement of the insolvency proceedings and measures taken in its course, the insolvency court may newly order a preliminary measure by which the court imposes a duty on the obligor to deposit to the custody of the court an

adequate amount as security for compensation of such damage or other detriment. The court will do so only upon the request of the entitled person filed within 30 days of the issuance of the decision on the discontinuance of the proceedings or of the issuance of the decision on rejection or dismissal of the insolvency petition; however, such preliminary measure may not be ordered until such decision is final and conclusive. This preliminary measure can be ordered despite the fact that the amount of the damage or other detriment cannot be specified yet.

Deletion from the registry of debtors, inaccessibility of data in the insolvency registry

(i) If the insolvency petition has been rejected because of its defects or apparent lack of grounds, (ii) if the insolvency proceedings has been discontinued because of uncured or incurable lack of conditions of the proceedings or (iii) if the insolvency proceedings has been dismissed (except for dismissal due to lack of debtor's assets), the debtor can newly request the court to delete the debtor from the registry of the debtors and to make the data regarding the debtor in the insolvency registry inaccessible within 15 days of such request. The debtor may not file such request earlier than 3 months after the legal force of the respective decision on termination of the insolvency proceedings. However, if a remedial measure to review such decision is applied for, the court will not delete the debtor from the registry of debtors and will not make inaccessible the data regarding the debtor in the insolvency registry for the time such application for remedial measure is dealt with.