

Breach of directors' duty leading to insolvency and its consequences

Tereza Vodičková

In connection with the liability of the members of the statutory body the Business Corporations Act (BCA) introduced from 2021 a new institute of Action to supplement liabilities largely inspired by the *action en responsabilité pour insuffisance d'actif* used in the French legal system.

The aim of this paper is to underline the difference between the previous Czech regulation related to liability for the wrongful trading and the above mentioned newly introduced regulation referring to the breach of duty which seems to be wider than the former conception of liability.

From 2021, in accordance with the Section 66 of Czech BCA if a member of the statutory body but also a factual or shadow director has contributed to the bankruptcy of the business corporation by breaching his duties, the insolvency court, may decide that this member is obliged to provide performance from its own funds to the assets of the company. It is always at the proposal of the insolvency administration. The compensation could extend up to the amount of the difference between the total debts and the value of the assets of the business corporation. It should be however mentioned that the value and the extend of assets depends largely on the approach of the administrator. When determining the amount of performance, the insolvency court takes into account in particular the extent to which the breach of duty contributed to the insufficient amount of assets.

The paper will describe how the Czech courts examine the fact that the legal acts of the statutory body contributed to the insolvency. The breach of duty can spread from the complete resignation to the function or significant failure of the managerial care to just a simple negligence. It has always to be determined if there is a causality between the conduct of the statutory body and the insolvency.

It will be also discussed if this request is rather a claim for damage with the sanction character or a compensation claim in favor of creditors.

At the same time under the Czech Insolvency Act a debtor's statutory body can be liable to creditors for damage caused by the late filing of the debtor's insolvency petition. It will be discussed if these two provisions may apply parallelly or not.