

# Legal Alert

**6/2015**

## **Novelization of the Insolvency Act**

We would like to inform you that the Ministry of Justice of the Czech Republic prepared an amendment to the Act No. 182/2006 Coll., on insolvency and its solving methods (Insolvency Act, hereinafter „**the Act**“) in the end of May. Purpose of this amendment is to strengthen the Ministries' surveillance powers over insolvency administrators, reduce the administrative burdens of insolvency courts and to enhance the protection against so-called vexatious (evidently unfounded) insolvency petitions. Within this Legal Alert we will focus mainly on unfounded insolvency petitions, which may negatively affect the business of entities that are not in insolvency (nor impending insolvency) and are not obliged to file an insolvency petitions against themselves.

According to the current version of the Act, the insolvency court must publicly announce the initiation of an insolvency proceeding by publication of a court decree issued within the two hours from its filing with the respective court. It has been deduced by the case law that the insolvency court must preliminarily examine both the application and the insolvency petition itself within this time limit and reject it in case of any missing essentials or formal defects. However, this procedure was not always efficient in practice as it was not able to prevent from announcing unfounded „vexatious“ petitions filed by entities different from the debtor. Amendment to the Act suggests to introduce so-called „preliminary assessment of the creditor's petition“, which will mean that the insolvency court may reject the petition immediately if it concludes that there is a possibility of abuse of rights of the proposer at the expense of its competitor (the debtor). Significance of this change is also in the fact that it is possible to prevent the damage of the competing entity in the position of the debtor in the initial phase of the insolvency proceeding by not issuing a court decree so the public will not get to know about it at all. In this phase, only the proposer and the debtor may have the right to inspect the insolvency file and take copies and extracts from such file which will limit the group of those knowing about the opening of insolvency proceedings. The proposed amendment should prevent the dissemination of information about the insolvency proceedings opened with malevolent intent. Such information often caused damage to the reputation and image of the entrepreneur in the eyes of those not familiar with the insolvency proceedings.

Effectiveness of this amendment is suggested as of July 1<sup>st</sup> 2016.

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