



How to protect yourself against bullying by an insolvency petition?

Bullying with an insolvency petition refers to filing an insolvency petition that is entirely unjustified, yet sufficient to initiate insolvency proceedings and bringing about negative consequences for the alleged debtor. Public sources suggest that 9% of Czech companies have experienced this type of bullying.

INSOLVENCY PROCEEDINGS AND THEIR IMPACT

Bankruptcy generally occurs when you are – or may soon be (in which case we’re talking about imminent bankruptcy) – unable to meet your financial obligations for a certain period of time. The general purpose of insolvency proceedings is then to settle the property matters between you and your creditors in a just manner. But insolvency proceedings not only have negative legal consequences such as limiting your ability to freely dispose of your property, but also non-legal consequences such as harming your reputation and raising doubts about your credibility and financial situation, which could be much more serious for you than the legal ramifications.

Once insolvency proceedings are commenced, your existing contractual relations become endangered, including those that raise funding for your business. This is because many contracts include a clause according to which the mere initiation of insolvency proceedings is grounds for parties to withdraw from the contract. Alternatively, contracts may stipulate that commencing of insolvency proceedings is a breach of contract penalised by a contractual fine. And in the case of bank contracts, the mere initiation of proceedings may constitute a reason for the bank to stop providing banking services or demand that the debtor return any funds previously provided.

WHEN AN INSOLVENCY PETITION BECOMES BULLYING

An unjustified insolvency petition refers to when a party initiates insolvency proceedings for reasons other than the just settling of property (i.e. bullying) – especially when filed against a person or company that is not bankrupt and, in fact, may be in very sound financial condition. The usual aim here is to put pressure on you in a relatively inexpensive way (the fee for filing an insolvency petition is only CZK 2,000, while the fee for a civil action is 5% of the sued amount), though its purpose may also merely be to harm you as a competitor.

PROCESS OF INSOLVENCY PROCEEDINGS

Insolvency proceedings are initiated by filing a petition with the insolvency court, which is required to announce commencement of the proceedings by publishing a notice in the

insolvency register within two hours, at the latest, of receiving the petition. You then receive a notice (delivered either by hand or to your data box) informing you of the proceedings, leaving you with no procedural means to protect yourself against the negative impact of the announcement. As a result, when a bankruptcy petition is unjustified, it leaves you defenceless against both the legal and non-legal repercussions of the petition, regardless of your financial fitness.

HOW TO PROTECT YOURSELF AGAINST INSOLVENCY BULLYING

The insolvency court is obliged to reject any unjust petitions within seven days of filing. But you can help the court determine if a petition is unjustified by providing it with a statement that describes your financial health and lack of impending bankruptcy and includes supporting documents such as financial statements from previous years, tax returns, tax clearance certificates from tax authorities, auditor reports, bank account statements, etc. (if you consider any of the information in the documents to be business secrets, ask the insolvency court not to publish them (either fully or partially) in the insolvency register or include them in the insolvency file that is available to the parties to the proceedings). In addition, you should comment on the alleged amount owed to the insolvency petitioner – state, for example, whether the debt exists at all or why it was not paid (e.g. because it's disputed) – and provide supporting documents. And if you believe that the petitioner is only using the petition either to escalate a commercial dispute that rightly should be settled in civil court or to harm you as a competitor, be sure to include this in your statement. Finally, if there are any procedural errors in the insolvency petition, be sure to point these out as well.

The more relevant information you provide to the insolvency court – and the faster you can get it to the court – the better. To protect yourself against bullying you need to act quickly and submit your statement as soon as possible, but no later than the seven-day window.

PETITIONERS RISK FINES AND DAMAGE COMPENSATION

If the court concludes that an insolvency petition is unjustified, it may impose a fine on the petitioner up to CZK 50,000. For this reason you should also suggest in your statement that the court make use of this right.

Also, if you have the documentation to prove that you've been damaged or that there is imminent danger of damage (e.g. in the case of a contract with a financing bank that entitles the bank to withdraw from the contract if insolvency proceedings are initiated), you can also file a motion with the insolvency court to issue an interlocutory judgement requiring the petitioner to pay a deposit to the court in order to secure compensation. This motion has to be filed as your first act as an alleged debtor (i.e. either simultaneously with your statement or separately before filing your statement), otherwise you lose this right.

EXAMPLE OF EFFECTIVE PROTECTION

To illustrate how the above steps can effectively protect you from an unjustified petition, we can look at an example from this July in which the Regional Court in Hradec Králové refused an unjustified insolvency petition against BAK stavební společnost, a.s. In addition, the petitioner was fined CZK 50,000 and was required to pay a security deposit of CZK 10,000,000 for damage

compensation. The court reasoned that the debt documented in the petition was disputable and therefore should have been claimed in civil court instead of insolvency proceedings. In its statement, the alleged debtor, BAK stavební společnost, documented that, as a result of the insolvency proceedings being initiated, its financing was suspended and it lost an important international contract. BAK stavební společnost quantified the preliminary damage at approximately CZK 23.000.000, however, it will still have to claim the actual damages in civil court proceedings.

FURTHER STEPS

Ideally, the insolvency court will refuse any unjustified insolvency petition, and hopefully also impose a disciplinary fine on the petitioner and order the petitioner to pay a deposit for actual or imminent damages. The negative consequences of proceedings being initiated (especially limiting disposal of your property) will then disappear at the moment the refusal of the petition is published in the insolvency register – even if the petitioner appeals the decision.

In addition to the above protective measures, you can also bring a civil action against the petitioner in order to protect your reputation, or else file an action to protect yourself from unfair business conduct. You can demand that the petitioner refrain from the illegal conduct, remedy the situation, give up his/her/its baseless financial advantage or provide adequate redress, e.g. by means of an apology or financial compensation. In this case it's not necessary for you to prove or even suffer any damage since initiation of unjustified insolvency proceedings is always capable of causing damage.

AMENDMENT TO THE INSOLVENCY ACT

The Ministry of Justice has come to appreciate the seriousness of “bullying through an insolvency petition”, causing it this spring to propose a draft amendment to the Insolvency Act that attempts to prevent abuse of insolvency proceedings and allow the courts one day to check whether an insolvency petition is justified or not (as opposed to the current two hours). Although one day is not hardly sufficient, it's definitely a step in the right direction to partially preventing bullying through insolvency petitions. It cannot totally prevent it, however.

CONCLUSION

Unfortunately, presently there is no way to prevent the initiation of unjustified insolvency proceedings. Your only legal protection, should you find yourself the victim of insolvency bullying, is to promptly submit your statement and relevant documents.

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Legislative news

Let's look at the following selected legislative news from Q3 2015.



AMENDMENT TO THE LAW ON REGULATING ADVERTISING

On 17 August 2015, an amendment to the law regulating advertising, implemented by Act No. 202/2015, went into effect, introducing some changes related to subliminal and hidden advertising, as well as advertising of illegal lotteries and games.

Subliminal advertising and hidden advertising

The amendment removes provisions banning subliminal advertising (i.e. advertising that could influence a person without him or her knowing) and hidden advertising (i.e. advertising that's hard to discern as advertising because it's not designated as such). This doesn't mean that this type of advertising is no longer illegal, only that it's punished as an unfair business practice under consumer protection law.

In the same way, the law regulating advertising no longer requires that there be a clear differentiation and appropriate separation between advertising and other content. This, too, is now punished as an unfair business practice, meaning there is no need to amend the advertising regulation law in this respect.

Ban on advertising illegal lotteries and games, plus the disseminator's liability

The amendment now forbids advertising lotteries and similar games that don't comply with the special legal regulation, while at the same time expanding the liability of a disseminator of advertising. Whereas previously, a disseminator was only responsible for the method of disseminating advertising, the disseminator is now also generally liable for advertising illegal lotteries and similar games. This means that the disseminator is obliged to check whether a lottery or game is legal. If not, the disseminator is obliged to refuse to disseminate the advertising or else be liable for an administrative offence.

Obligation to keep information about the advertisement's author and disseminator

Under the new amendment, a party ordering an advertisement is obliged to retain information about the advertisement's author and disseminator, along with other materials and information related to the advertisement, for five years from the day the advertisement is disseminated for the last time. If during this time administrative proceedings related to the advertisement are initiated, the party who ordered the advertising is obliged to retain the information until a judgment is rendered in the matter.

AMENDMENT TO THE LAW REGULATING MINOR OFFENCES

On 17 August 2015, an amendment to the law regulating minor offences was adopted, introducing some changes in their punishment. The first part of the amendment went into effect on 1 October 2015; the other part will go into effect on 1 October 2016.

Here are the most significant changes and innovations the amendment is introducing.

Starting from 1 October 2015 the time-limit for proceedings has been extended

Previously, an administrative authority had one year from the day an offence was committed to complete its proceedings. This was often intentionally abused by offenders, who drew out the proceedings so that the administrative authority would run out of time. Under the new amendment, the one-year examination period is suspended at the moment proceedings commence, at which point a new time period starts. However, proceedings may not continue beyond two years from the date the offence was committed, meaning that offenders will still try to delay proceedings, though doing so is now more complicated.

Changes in on-the-spot fines

From 1 October 2015, fines of up to CZK 5,000 may be imposed on the spot, an increase from the previous amount of CZK 1,000. And from 1 October 2016, repeated minor offences will be more strictly punished and be recorded in an Offence Register, rather than handled on the spot.

Registering some minor offences in the Criminal Register

From 1 October 2016, some minor offences will be registered in the newly created Register of Minor Offences as part of the Criminal Register. These include offences:

- related to alcoholism and other addictions
- related to agriculture and forestry (but only violations related to protecting the agricultural land fund, game keeping or unauthorised hunting)
- related to the defence of the Czech Republic
- against property
- against the coexistence of citizens
- against public order

A registered offence remains in the register for five years from the date a legal decision on the offence went into effect, after which it is deleted.

Stricter punishments for certain repeated offences

From 1 October 2016, the amendment introduces stricter punishments for more serious types of repeated minor offences, which will newly be entered in the Criminal Record. These include offences against property, against the coexistence of citizens and against public order. An offence is considered repeated if a perpetrator is found guilty for the same offence more than once within twelve months.

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