



The use of mediation and the concept of the BONUS PATER FAMILIAS with special regards to insolvency matter

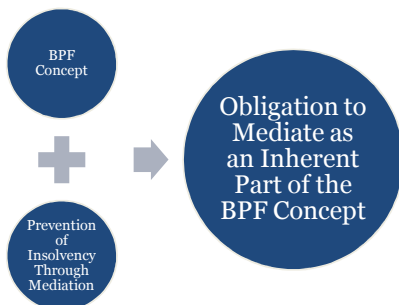
Dr. Martin SVATOS, Ph.D.

Mediation and Insolvency

☞ *Mediation is ideally suited to pre-insolvency cases where claims need to be settled quickly and where creditors, having already lost money, want to find ways of reaching resolutions cost effectively*

☞ *The biggest obstacle in mediation is to persuade the parties and their respective legal representatives that they should mediate*

Structure of the contribution



BONUS PATER FAMILIAS

☞ In Roman law, the term **bonus pater familias** (good family father) refers to a standard of care

☞ Analogous provisions

☞ *Buon padre di famiglia*

☞ *Bon père de famille*

☞ *Řádný hospodář (farmer)*



Scope

☞ A BPF used as a legal standard, esp. to determine whether someone acted with negligence

☞ The BPF acts **sensibly**, does things **without serious delay**, and takes **proper but not excessive** precautions.

☞ Minimal standard of care

☞ Minimal standard of knowledge

☞ Minimal standard of experience

☞ Minimal standard of caution

Act no. 90/2012 Coll., on Business Corporations

☞ Dozens of provisions

☞ Art. 52 Test of Conduct

☞ (1) When assessing whether a member of a body **acted with due care**, the care that would be exercised in a similar situation by another reasonably diligent person if they would be in the position of a member of a similar body of the business corporation shall always be taken into account.

☞ (2) Where, in proceedings before court, it is to be assessed whether a member of a body of a business corporation acted with due care, **the burden of proof shall be upon such member**, unless the court decides that the same cannot be reasonably required from him or her.

Art. 53 Consequences of Breach

☞ (3) **If any damage was suffered by the business corporation as a result of the violation of the duty of due care, it may be settled by the business corporation by agreement with the obliged person.** The approval of the supreme body of the business corporation adopted a majority of at least two thirds of all votes of all members shall be required in order for such agreement to be effective.

☞ (...)

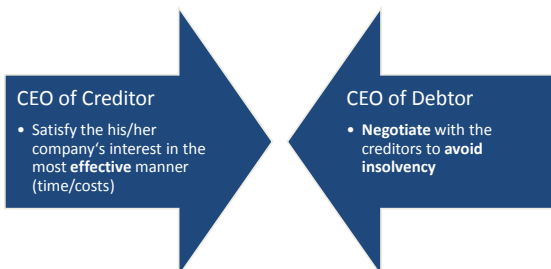
Article 68: Liability of members of a body upon bankruptcy

☞ (1) A court, on the basis of a petition of the insolvency administrator or a creditor of the business corporation, **may decide that a member or a former member of the business corporation's statutory body is liable for the fulfilment of all its obligations** if

- ☞ a) it has been decided that the business corporation is **bankrupt**, and
- ☞ b) the member or former member of the statutory body of the business corporation knew or should and could have known that the business corporation was facing an imminent threat of bankruptcy pursuant to another legal regulation and, **in breach of the duty of due care, failed to take all necessary and reasonably foreseeable steps to prevent the bankruptcy.**

☞ (...)

Scope of BPF in relation to mediation and insolvency



Thank you for your attention

Dr. Martin Svatos, Ph.D.

svatosmartin@forarb.com
www.forarb.com/en

Vysehradská 49
128 00 Prague
Czech Republic



Let's stay in contact!
