

# Czech Republic

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Written for inclusion in *Doing Business in Europe*, a publication by the Center for International Legal Studies in Salzburg, Austria.

## Introduction

The Czech Republic and the Slovak Republic<sup>1</sup> are successor States of the former Czechoslovakia (the Czech and Slovak Federal Republic) that ceased to exist on 31 December 1992 by virtue of Constitutional Act Number 542/1992 Coll. adopted by the former Federal Assembly on 25 November 1992. On 1 January 1993, both new States took over the authority entrusted previously by constitutional and other acts to the former federation.

The capital of the Czech Republic is Prague (population 1.2-million). Other important cities are Brno (389,892), Ostrava (330,614), Plzen (174,635), Olomouc (106,662), Ústí nad Labem (105,854), and Hradec Králové (106,454).

The Czech Republic's territory covers 78,864 square kilometers; its total population is 10,300,000. The Czech Republic comprises three historical lands: Bohemia, Moravia, and (Moravian) Silesia and is divided into 14 regions. The Czech Republic is situated in the geographical center of Europe and borders with the Slovak Republic, Germany, Poland, and Austria. The official language is Czech, and business languages are English and German.

Representatives of the Czech and Slovak nations established the former Czechoslovakia after the disintegration of the Austro-Hungarian Empire in 1918. It existed, with an interruption during the Second World War, until 1992. As a State entity have Bohemia and Moravia existed since the 11th century.

The official currency is the Czech Crown (CZK). The exchange rate in 2009 is CZK 18–19 to the US \$, and CZK 24–26 to the Euro. The Euro is expected to be adopted as the national currency only after 2015 due to higher budget deficits.

## Economy

The economy of the Czech Republic is characterized by a strong industrial base (reputation for quality manufactured goods, in particular automotive products), self-sustained agriculture (although handicapped by lower EU subsidies as compared to 'old' EU members), and fairly developed other branches of the economy. The economy is undergoing profound changes, especially characterized by privatization and liberalization and strengthening of the service sector. The GNP growth was in 2005 6.3 per cent, in 2006 6.9 in 2007 6 per cent, in 2008 3.1% (82% of EU 27) , in 2009 -4.1%, estimate 2010 1.5%, due to world financial crisis.

GNP per capita was in 2008 US \$14,450, and in 2009 CZK 342,704. 2008 GNP in parity

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<sup>1</sup> Informally called in German 'Tschechien' and 'Slowakei', in English 'Czechia' and 'Slovakia'.

purchase price was 81.3 per cent (EU–27 100 per cent, EU–15 110.3 per cent). The rate of inflation was in 2006 2.53 per cent, in 2007 2.8 per cent, in 2008 6.3 per cent, and expected in 2009 to be 2 per cent. The unemployment rate in 2007 was only 4.5 per cent, but 2009 9.9 per cent.

The advantages of the Czech economy are its geographical location in the center of Europe, high level of education, qualification and adaptability of human resources with competitive advantage of lower wages, highly developed domestic supply base, quite developed transportation, telecommunications, educational and health services infrastructure, high level of investment capacity, transfer of technologies, economic structure close to that of the total EU, relatively productive agriculture, macroeconomic stability, dynamic development, and stable currency.

Disadvantages are productivity of only two-thirds of that in Germany (71.3 per cent of EU-27), high level of enterprises' indebtedness and many bad debts from the privatization period, complicated tax system, high taxation of labor, rigid labor law, and increasing public debts ( 28.6% in 2010, 42% in 2012 in relation to GNP) and deficit of public finances (5.6% in 2009, to be decreased to 3% of GNP in 2012) required for adoption of EUR 2015-16. There is a need for more investments in education and research, and, in particular, a problem of slow and low level of law enforcement. The World Economic Forum put the Czech Republic on 38th position among 117 states.

The main task is to overcome the effects of world economic crisis, reduce the State budget deficit, and then finalize all financial reforms, including the pension and health systems.

### **Climate for Foreign Business**

After 1989, the Czech Republic became a member of the UN, WTO/GATT, OECD, and CEFTA (Central European Free Trade Association). Accession to NATO was effected in 1999 and to the EU in 2004.

Liberalization of prices started in January 1991, and now only a limited number of prices are regulated, such as rents, medicines, energy, and railway tickets. Foreign capital is expected to assist in the transformation process in the form of joint ventures and with direct capital investments.

The Czech Republic has remained largely dependent on the import of raw materials from the former Soviet Union (eg, oil, gas delivery), and on exports to Germany (one-third) and to 27 EU countries ( 85 per cent).

Among the former communist countries, the Czech Republic seemed to have had the best starting position with its industrial base, although often outdated; its skilled and relatively cheap labor force (international comparison of average monthly labor costs 2005 were EUR 954 compared to EU-27 EUR 2,981, or Austria EUR 3,767), with prices being 39 per cent of the EU average (58 per cent of Portugal); and its industrial traditions, its geographic location, and its currency exchange rates that had been stable in the past 10 years.

As mentioned elsewhere in this chapter, the Czech Republic attracts foreign capital investments for favorable conditions, protection of investments, and free repatriation of profits. Foreign direct investments amounted in 2005 to EUR 9,374-million, in 2006 to

EUR 4,797-million, in 2007 to EUR 6,674-million, and in 2008 to EUR 7-million.

### **Foreigners' Forms of Legal Presence**

The regulation of business vehicles for foreigners is contained chiefly in the Commercial Code applicable as from 1 January 1992 and in some other related legislation explained below. The Czech Republic has not adopted separate joint venture or foreign investment legislation.

There are no restrictions concerning foreign investments in Czech companies, which can be 100 per cent owned by a foreign investor; no participation of Czech capital or citizens is required, and very few branches of activity are excluded from foreign ownership or control (eg, trading with arms).

As a rule, foreign natural persons or foreign legal entities having their residence or seat abroad may do business in the Czech Republic<sup>2</sup> under the same conditions and to the same extent as Czech persons if they are registered in the Commercial Register of the appropriate Czech court. Legal competence given by the foreign law in the establishment of a foreign legal entity as well as its internal legal relationships and liabilities are applicable also in the Czech Republic (incorporation principle).

Foreign persons may further participate in the establishment of a Czech legal entity or join an existing entity (joint ventures). They also can establish themselves as a Czech legal entity and, in certain cases (eg, a limited liability company), become its sole partner<sup>3</sup> This regulation allows minority, majority, or sole ownership.

Furthermore, a foreign legal entity, established under foreign law, may move its seat from abroad to the Czech Republic. The only condition is an international treaty that permits it. Internal legal relations of such entity will continue to be governed by the law of the incorporating State, including liabilities that, however, cannot be less extensive than those provided by Czech law for the same or similar form of legal entity. Czech legislation is in conformity with EU Directives, including the European Company (*Societas Europea*) European Economic Interest Grouping and European Cooperative Society.

The Commercial Code does not provide for representative offices, although certain foreign companies such as banks and insurance companies have favored that type of presence with functions limited to promotion, marketing studies, and conclusion of contracts in the name of the parent company. A solution is to register a branch office<sup>4</sup> but limit its functions to those of a representative office.

Legal entities and persons acting for them must give their full address and submit extracts from the Penal Registry and evidence of local address must obtain a relevant license and be registered with the Commercial Registry. EU nationals enjoy a more favorable treatment — no local address and Czech non-criminal records are required. They can conduct business or work similarly to Czech nationals, with few exceptions, while other foreigners must obtain relevant work and residence permits. Foreign entities

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<sup>2</sup> Commercial Code, ss 21 *et seq.*

<sup>3</sup> Commercial Code, ss 21 *et seq.*

<sup>4</sup> In the Code called 'organizational unit of a foreign person'.

must indicate an address in the Czech Republic for mail delivery.

Authorization to carry on business activities takes effect on the day of entry in the Commercial Register, which is proved by obtaining the Trades Certificate (*Gewerbeschein*) or Trades License (*Konzessionsurkunde*) from the Trades Licensing Office (*Gewerbeamt*) prior to court registration.

All this takes some six weeks and the procedures are still rather bureaucratic. Applications are filed in the Czech language and are subject to certain charges. Foreign investors appoint for that purpose local lawyers and at least for the initial period a Czech executive. Procedures to simplify registrations and re-registrations in Court Commercial Registries were adopted in 2005 (filing-in forms, time limit for court action).

### **Protection of Investments**

Protection of investments of foreign persons in the Czech Republic is given by law<sup>5</sup> The property and assets can be expropriated or ownership rights limited only by virtue of law, which in the public interest cannot be satisfied in any other way. Against this, there is recourse at the court. In such a case, compensation must be given without delay in the full value at the time of expropriation, freely transferable abroad in convertible currency.

Moreover, the Czech Republic has concluded over 80 bilateral agreements on promotion and protection of investments. They provide for equal treatment of foreign investors, guarantee to prevent expropriation and repatriation of profits as well as for methods of settling disputes. It can safely be said that the combination of these two types of legal regulation gives full protection to foreign investors and for repatriation of their profits.

### **Export-Import Control**

Act Number 228/2005 Coll. Regulates in compliance with EU legislation control of trading with products for safety reasons from and to EU Member States. The list of products subject to such control is specified by the Ministry for Industry and Trade. Transport of such products is subject to the permit of that Ministry, replacing the former licenses.

## **Legal System**

### **Constitution**

The Czech Constitution<sup>6</sup> declares that the Czech Republic shall be a sovereign unitary and democratic state ruled by law, based on respect for rights and freedoms of man and citizens. The legislative powers are vested in the Parliament consisting of the Chamber of Deputies and the Senate. The Head of State is the President. The Government is the highest executive body. The Constitution provides also for the judiciary, including the Constitutional Court, the Highest Control Bureau, and the Czech National Bank. Municipalities are the lowest level of self-administration. Higher units (counties) existed until 1989 and again as from 2000.

Part of the constitutional system is the Bill of Fundamental Rights and Freedoms and other constitutional acts.

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<sup>5</sup> Commercial Code, s 26.

<sup>6</sup> Adopted on 16 December 1993 as Act Number 1/1992 Coll.

By Act Number 4 of 15 December 1992, the Czech Republic declared to continue to be bound by laws existing in the Czech and Slovak Federal Republic on the day of its dissolution. By the same Act, the Czech Republic recognized all States and overnments that were recognized by the former federation and assumed rights and obligations of international law applicable to the former federation and relevant to the Czech Republic.

### **Economic Legislation**

After the change in 1989, the Parliament rather hastily adopted a number of laws that were needed for the transformation of the economy. Some of them had to be amended soon thereafter. Thousands of new Acts and other legal regulations were published, and many remain to be prepared, discussed, and adopted including a new Civil Code and Criminal Code. The legal system is so far a combination of old and new legislation.

The complete system is being changed, and this makes it particularly difficult to report on Czech legislation at a certain date. The general tendency is to adapt the legal system in conformity with European Union standards and its legislation. From among EU regulations, almost all of them were already adopted in 2002; the process was completed before accession to the EU in 2004. As provided in EU legislation, some of its regulations are superior to national legislation.

### **Sources of Law for Business Operation**

Apart from the Constitution, the following legislation is relevant for doing business in the Czech Republic:

- The Customs Code;
- The Foreign Exchange Act, financial laws, tax laws, bilateral double tax treaties, and the Accounting Act;
- The Commercial Code<sup>7</sup> (amended 64 times) consists of 972 Articles, regulating legal relationship of entrepreneurs, obligations, and other relevant relations pertaining to commercial activities, including foreign persons, the Commercial Registry, economic competition, various types of companies, and commercial obligations (the relevant provisions are mentioned elsewhere in this chapter);
- The Act on Civil Law Procedure<sup>8</sup> (amended 98 times, including decisions of the Constitutional Court) regulates the procedure before all courts and in all matters. Minor disputes are instituted at the district level and others at the county level. Appeals Courts are the County Court or one of the two High Courts; the highest judicial body is the Supreme Court;
- The Civil Code<sup>9</sup> (amended 55 times) governs legal relations not regulated by the Commercial Code and also contains certain provisions applicable for business transactions. The Civil Code is, therefore, *lex generalis* and the Commercial Code *lex specialis*. The Civil Code regulates, in particular, the protection of personhood and the inviolability of property, relations between natural persons and legal entities, as well as property relations between these persons and the State. As in Civil Codes of other

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<sup>7</sup> Act Number 513/1991.

<sup>8</sup> Act Number 99/1963.

<sup>9</sup> Act Number 40/1964.

countries, it also regulates relations of obligation and legal provisions of several types of contracts;

- The Trades Licensing Act<sup>10</sup> (amended 100 times) contains regulations for entrepreneurs and smaller enterprises, including production and services in specialized fields;
- The Labor Code<sup>11</sup> social security, and health insurance laws;
- The Act on Bankruptcy (Insolvency Act)<sup>12</sup> and
- The Act on International Private and Procedural Law<sup>13</sup> contains a codification on conflict of laws of two or more countries where Czech law or jurisdiction may be involved.

This and other legislation pertaining to doing business in the Czech Republic, adopted up to June 2009, is, where appropriate, mentioned in the following sections of this chapter.

A completely new Civil Code and Commercial Code are under preparation and should be adopted within two to four years. A new Penal Code and Act on Penal Proceedings and an Insolvency Act have already been adopted.

### **Commercial Companies**

The Commercial Code defines four types of commercial companies: partnership with unlimited liability of all partners (*verejná obchodní společnost*), partnership where some partners have a limited liability (*komanditní společnost*), companies with limited liability (*společnost s ručením omezeným*), and joint stock companies (*akciová společnost*). They are all legal entities and enjoy legal personality.

In 2008, there were 270,884 commercial and partnerships companies (18,093 joint stock companies, 14,391 co-operatives), and (697,888 private entrepreneurs), with the number still increasing (there are only 668 State enterprises).

If not provided otherwise in the law, the founders may be legal entities and/or natural persons, and there are no nationality limitations.

A company is established by a notarial deed. An appointee having a verified power of attorney may represent the founders. Signatures must always be verified. Legal entities as founders must provide an extract from their Commercial Registry or a similar document proving their legal existence, verified by the Czech Consulate if there is no agreement on recognition of public deeds between the two States or membership in the Hague Convention of 5 October 1961 on apostille. The registered capital may consist of financial and non-financial contributions that must be valued. The shareholding of a partner represents his/her level of participation in the company's assets. A company begins its legal existence on the day of its entry in the Company Register. The motion

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<sup>10</sup> Act Number 455/1991.

<sup>11</sup> Act Number 262/2006.

<sup>12</sup> Act Number 182/2006.

<sup>13</sup> Act Number 97/1963.

must be made within 90 days as from establishment. In case of rejection of the motion, there is the right of appeal. Waiting time for registration at the court is five days for collection of documents, and obtaining obligatory trades licenses take several weeks due to still rigid legislation. Until registration, the company may act through the founders, and the company will take over these obligations if they are not rejected within three months.

The law also contains provisions on the prohibition of competition for certain persons. Violation may lead to claims to give out benefits or even to claims for damage.

The law also contains detailed provisions on termination and liquidation of companies.

For court registration, a prior license according to the Trades Licensing Act may, in most cases, be required for the scope of activities, with appointment of a responsible representative.

The court will check on it together with the bank certificate on deposit of registered capital. Every company obtains a statistical (identification) number and reports for tax purposes.

Individuals acting and signing for the company (executives of limited or members of the board of directors of joint stock companies) must submit to the court an extract from their Penal Registry in the Czech Republic or in the country of residence (where such Registry does not exist — a sworn statement, verified by the appropriate Embassy). Foreigners acting for Czech legal entities are required to have a long-term residence visa obtained from the Czech Consulate abroad, with residential address in the Czech Republic. Simplified procedures are applied for EU and EEA nationals who do not need a residence permit.

### **Joint Stock Company**

The joint stock company (in Czech *akciová společnost*, abbreviated as 'a.s.') is a company the registered capital of which is divided into a particular number of shares of a particular nominal value. The company may be founded by a single entity or by two or more natural persons. The founders may form the capital stock by their own investments or by a call for subscription of shares.

As a result of privatization, joint stock companies represented in the beginning the most common form of commercial organization in the Czech Republic where former State enterprises were transformed and their shares distributed.

There are basically two types of shares: bearer and registered. The latter also may be in the name of two or more persons. Statutes also may provide for preferred shares (without voting rights in the general meeting and with priority in payment of dividends) or for exchange of bearer shares for registered shares, and *vice versa*. Statutes also provide for the par value of each share in each class (no minimum share value is given by law) and may provide for the right to issue bonds without increase of the share capital. The company may not subscribe shares representing the registered capital and may acquire its own shares only in exceptional cases. The company may use only assets above the registered capital for acquisition of shares.

The share capital must be a minimum of CZK 2-million (EUR 71,430) and, in case of

public offering of shares, at least CZK 20-million. There is no limitation on the number of shareholders.

The Commercial Code regulates in detail the elements of a founder's deed (if founded by a single legal entity) and of a founding agreement (if founded by two or more persons), including number, classes, and par value of shares and subscribed contributions of individual founders, and method of eventual subscription of shares. Non-financial contributions must be defined and valued by two experts appointed by the court. At least 30 per cent of the financial value of subscribed shares must be paid before the founding shareholders' meeting. This does not apply to non-financial contributions. The Code also provides that the statutes must contain the composition and competence of the organs of the company, the reserve fund, the distribution of profit, and increase and decrease of the registered capital.

The bodies of the company are the shareholders' (general) meeting, the board of directors, and the supervisory council.

The shareholders' meeting has the usual functions. A quorum requires shareholders having more than 30 per cent of the registered capital. Decisions are taken by a simple majority with the exception of issues that are by virtue of law or according to the articles of association decided by a two-thirds majority of the aggregate votes of the attending shareholders (amendment of articles of association, increase or reduction of capital stock, or on winding-up the company). The board of directors is the so-called statutory body, managing the company and acting on its behalf. Members are elected and dismissed by the shareholders' meeting or, if the statutes permit, by the supervisory council. There are at least three board members, elected for up to five years. Foreigners as members of the board who act and sign for the company need a residence visa.

Although the law does not provide for managers, such duties may be delegated to one of the members of the board of directors or to third parties. There are no nationality requirements.

The supervisory council supervises the performance of the board of directors and the business activities of the company and reviews the financial statements. It may convene a general meeting. The council consists of at least three members, one-third of whom is elected by the employees.

A reserve fund is obligatory, with a minimum of 10 per cent of the registered capital, fed annually by at least 5 per cent of net profits until the level fixed by the Statutes is reached, with a minimum of 20 per cent. Liquidation is decided by the shareholders' meeting<sup>14</sup>.

### **Limited Liability Company**

The limited liability company<sup>15</sup> or private company limited by shares (in Czech *společnost s ručením omezeným*, abbreviated as 's.r.o.' or 'spol. s r.o.') is a company the registered capital of which is composed by fixed contributions of its partners and may be founded by only one person (natural person or legal entity) and may have no more

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<sup>14</sup> Commercial Code, ss 154 and 220.

<sup>15</sup> small and medium-sized companies are 's.r.o.'; only the largest and all privatized former State enterprises are 'a.s.'.

than 50 partners. However, a single-member limited liability company cannot form itself or be a single member of another limited liability company. One individual may not be a single member of more than three limited liability companies. The company is liable for violation of its obligations with all its assets; a partner is liable only up to the size of (even unpaid) registered contributions and is entitled to part of the profits, proportionate to paid-up investment contribution.

The registered capital is at least CZK 200,000 (EUR 7,143), the minimum contribution of a partner CZK 20,000. Non-financial contributions are permitted, subject to description in the contract and valuation by two court appraisers.

The law provides for elements of the founding document, including the name, seat, scope of activities, size of registered capital and individual contributions, and the appointment of the first Director(s) (Executive(s)), by notarial deed.

Before registration, at least 30 per cent of each financial contribution must be paid up, the minimum being CZK 100,000 (the rest in up to five years). If there is only one founder, the capital must be paid up in full. The motion for registration is signed by all partners.

One person may have only one shareholding, but one shareholding may belong to more than one person. Transfer of shareholding to another partner is subject to approval of the shareholders' meeting if the contract does not say otherwise. Transfer to a third party must be permitted by the contract, and this third party accedes in writing to the contract.

The company may not acquire its own shareholdings. If profit-sharing is not determined in the contract, the shares correspond to the shareholdings. Contributions cannot be returned during the existence of the company.

A reserve fund is obligatory, by law at least 5 per cent of the registered capital, to be fed annually by 5 per cent net profit up to at least 10 per cent.

The supreme body of this company is the general meeting. The quorum is at least 50 per cent, voting by simple majority of partners present and, for certain issues, two-thirds. The statutory body of this company is one or more executives. A supervisory council is established, if it is so provided by the contract. It supervises the activities of the company and of management and controls the accounting. Executives and supervisory board members are subject to the prohibition of competitive conduct. Executives are appointed by the general meeting from among company members or other individuals. If they are foreigners, they need a residence visa. This is not applicable to EU nationals.

The law also provides for succession, division of shareholding, jurisdiction of the shareholder's meeting, change of contract, increase or decrease of capital, termination of participation by the court, exclusion of a partner, settlement, and liquidation<sup>16</sup>

### **Partnership with Unlimited Liability**

The unlimited partnership or general commercial partnership (in Czech *verejná obchodní společnost*, abbreviated as 'v.o.s.') is a company in which at least two persons (natural or legal entities) do business together under any common name and are liable for the

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<sup>16</sup> commercial Code, ss 105–153.

obligations of the company jointly and severally with all their property (in English more appropriately 'public trading company'). All partners are equal.

The law gives only a minimal requirement for the contract establishing the company and leaves it to the partners to regulate their mutual relationship. The company is established not by signature of the contract but by registration with the court.

Financial and non-financial contributions of the partners are part of the assets of the company and are thereby separated from the partner's property.

Management may be exercised by each or some of the partners or by a third party, depending on the contract. The managing partner is bound by a majority vote. If the contract does not say otherwise, each partner has one vote.

The law provides also for termination and liquidation of the company, in case of death of a partner and for settlements<sup>17</sup>

### **Limited Partnership**

A limited partnership (in Czech *komanditní společnost*, abbreviated as 'k.s.')

is a company in which one or more partners are liable for the obligations of the company only up to their registered shareholding and one or more partners are liable with all their property. The company is managed only by those partners whose liability is unlimited. In other than management affairs, all partners take decisions by a majority vote if the contract does not say otherwise. The contract may also give to certain partners more than one vote.

The law sets forth the elements of the contract, including scope of activities and determination of limited and unlimited liability, as well as the size of each contribution. Enough room is left for individual arrangements, including profit sharing. If nothing is said, then partners with unlimited liability obtain one-half and divide it among themselves in equal parts. Partners with limited liability divide their half according to the size of their paid contributions.

The law provides further for relations to third parties and for termination and liquidation of the company. This type of company also must be registered with the court<sup>18</sup>

Czech law does not contemplate corporate forms equivalent to the German and Austrian *GmbH und Co KG* whereby the unlimited partner in a limited partnership is a limited liability company.

### **Cooperative**

A cooperative (in Czech *družstvo*) is an association of an unlimited number of persons (having at least five natural or at least two legal entities) for the purpose of business activities of economic, social, or other needs of its members. Although cooperatives are and will be numerous in the fields of agriculture, housing, and small-scale production, they may not be of particular interest to foreigners. The cooperative is a legal entity, having liability for its obligations with all its assets.

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<sup>17</sup> Commercial Code, ss 76–92.

<sup>18</sup> Commercial Code, ss 93–104.

Members are not liable for such obligations. The registered capital (at least CZK 50,000) is composed of contributions that are a condition of membership given by the statutes. Members may subscribe according to statutes for additional contributions or for further property participation. Before registration, at least 50 per cent of registered capital must be paid up.

The establishment of a cooperative requires a founding meeting for determination of the registered capital, approval of statutes, and election of the board of directors and of the control commission. A notarial record certifies the list of members and their subscriptions. Legal existence begins on the day of entry in the commercial register. The law provides in detail as to the statutes, membership, organs, termination, and liquidation.

### **Branch of a Foreign Person**

A branch of a foreign person (in Czech *organizacní složka zahraniční osoby*) is considered as a division of a foreign entity or person, without assuming itself rights and obligations. Contracts and invoices are made in the name of its founder.

The branch requires also court registration based on verified declaration of the foreign person, specifying its scope of activities, seat, and appointing its manager. For the scope of activities, trades licenses are required prior to court registration as in the case of commercial companies. No registered capital is required.

### **Association**

The Civil Code provides for association of several persons to attain an agreed purpose. Such association has no capacity to acquire rights and assume obligations. Each participant is obliged to provide something of material value. These contributions are in the joint ownership of all participants, each owning a share in a ration corresponding to the extent of the contribution. Any property acquired through the performance of their joint activity is in the joint ownership of all participants. Participants are jointly and severally liable for obligations to other parties. The Civil Code provides for the method of voting, resignation or exclusion of participants, and payment of contribution and share in association. Resignation is not to be done at an inopportune time and to the detriment of other participants.

### **European Entities**

European forms of entrepreneurs are allowed to operate in the Czech Republic, in particular the European Company (*Societas Europaea*), European Economic Interest Grouping, and European Cooperative Society.

### **Mergers and Acquisitions**

The Czech market is after the large privatization of about 4000 state-owned companies not so much the public but private M&A market. Only a few public companies remain to be privatized. On the other hand, acquisition of private companies or at least an interest in them remains an alternative method to formation of a new commercial company. The targets are joint stock companies through direct purchase of shares from the current shareholder(s) and the acquisition of shares in a tender offer. Regulation is contained in the Commercial Code, in the Act on the Securities Commission, and in the Act on the Protection of Economic Competition, including on bids, timetables, mandatory offers, thresholds, minority shareholders, and so on. Mergers and acquisitions in limited liability companies are governed by the Commercial Code, providing for requirements of share

purchase agreements. Transfers and assignments of shareholdings require written form with verified signatures and are effective on the day of signing. Buyers must accede to existing Articles of Association. Subsequent re-registration in the Court Commercial Register is only declaratory. The Czech market of M&A is increasing (242 transactions in 2005, 269 in 2006). Czech companies now conclude also more transactions abroad (25 in 2005, 44 in 2006), most of them in Slovakia and Poland.

### **Commercial Obligations**

Commercial obligations are regulated by Part Three of the Commercial Code. It provides for obligations of entrepreneurs and regulates relations between the entrepreneurs and the State or its entities such as municipalities. Some provisions of the Code are mandatory but otherwise parties may depart from provisions of the Code and stipulate their rights and obligations differently.

This Code should be consulted in all commercial transactions where Czech law will be applicable regarding conclusion of contracts and statute of limitations and, more particularly, regarding the following types of contracts:

- Contract of sale;
- Contract of sale of an enterprise;
- Contract of lease of an enterprise;
- Lease contract with option to purchase a leased asset;
- Credit contract;
- Industrial property license contract;
- Contract on a deposit of a thing;
- Contract of storage;
- Contract for work;
- Mandate;
- Commission agent's contract;
- Inspection contract;
- Forwarding contract;
- Contract of carriage (of things);
- Contract on the lease of means of transport;
- Contract on operating a freight charter (charter contract);
- Brokerage contract;
- Commercial representation contract;
- Silent partnership contract;
- Letter of credit;
- Collection contract;
- Contract on the deposit of a thing with a bank;
- Current account contract;
- Deposit account contract;
- Traveler's checks; and
- Indemnity statement.

Remaining types of contract are regulated by the Civil Code (contracts of sale and contracts of barter, donation contracts, contracts for work, loan contracts, contracts for temporary gratuitous use, lease contracts, mandate, agency without mandate, contracts on custody, for accommodation, carriage, agency contracts, bank deposits, insurance contracts, association agreements, pension contracts, wagers and games of chance,

public price competitions, public promises, and contracts on travel arrangements). Very few provisions are considered as *ius cogens* and parties are mostly free to agree on different provisions.

Contracts should include a settlement-of-disputes clause providing preferably for settlement of disputes by arbitration. Foreign arbitral awards are recognized and enforced according to the New York Convention of 1958. Local arbitration is encouraged by law; the institutional arbitration body is the Arbitration Court attached to the Economic Chamber and Agrarian Chamber of the Czech Republic in Prague, which enjoys good reputation and handles both domestic and international cases, also according to foreign laws. Mediation of disputes has not yet been developed.

### **Trades Licensing**

According to the Trades Licensing Act<sup>19</sup> a trades authorization or trades license must be obtained by a commercial company or the branch of a foreign entity for its full scope of activities prior to its registration in the Court Commercial Register. Small business is carried out on the basis of such authorization or license without court registration. This is based on the German and Austrian systems (*Gewerbe*).

Trades are classified into two main categories: notifiable trades (crafts, regulated trades, unregulated trades) and licensed trades and according to the object of activities as commercial trades, manufacturing trades, and service-rendering trades. Single authorization is given for trades carried on in an industrial manner. Individual trades are listed and petitioners must choose them from the list.

This Act regulates the conditions for permission to be engaged in the trades as well as the supervision of compliance with these conditions. The Act applies both to natural and legal persons engaged in the field of trades.

A tradesman or his responsible representative must have for certain trades the qualification prescribed by this Act.

The Trades Licensing Office requires from the applicant the evidence of qualification, the excerpt from the Czech penal register (for EU nationals from the country of residence), a sworn statement, and evidence on ownership or lease of business premises.

### **Real Estate Cadastre**

According to Act Number 359/1992 Coll., entries into the Real Estate Cadastre prove ownership rights to real estate in the form of registration, a record, or a note or its deletion. On the day of registration or deletion arise or expire also mortgages, easements, pre-emptive rights, or other rights *in rem*.

### **Financial Aspects**

#### **Foreign Exchange Regulation**

According to Foreign Exchange Act Number 219/1995 Coll. (amended 10 times), import and export of any amount of convertible currencies by foreigners is allowed without limit and need not be declared. Czech citizens are free to buy convertible currencies and are allowed to acquire them from any other legal source. Foreign exchange accounts are widely used with interest rates comparable to banks abroad. Export and import of Czech

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<sup>19</sup> Act Number 455/1991 Coll.

currency over a minimum level and its illegal trading are punishable by law.

Interest is subject to 15 per cent taxation. From these accounts, any amount, certified by the bank, may be taken out of the country and spent freely. In certain cases, the purpose of the payment must be declared. Imports of goods by Czech citizens are allowed free of duty up to CZK 6,000 per person per crossing.

All legal entities and entrepreneurs' firms are so far subject to the internal convertibility rules, which means that their income from abroad is converted into local currency, and their foreign bills are paid for them by their bank in convertible currency unless a foreign exchange account is opened.

The Foreign Exchange Act introduced full convertibility of the Czech currency with a few restrictions. The Act, as the past legislation, makes a difference between residents (individuals having permanent residence in the Czech Republic or a legal entity having a registered seat there) and non-residents (individuals or entities other than residents). The Act indicates when a foreign exchange license or permit is required by the Ministry of Finance or by the Czech National Bank.

Non-residents may purchase pecuniary means in foreign currency for Czech crowns and *vice versa* and import and export Czech and foreign currencies and other values. It is possible to accept credits from abroad without any permit, to keep an account with a bank in the CR in any currency, to buy real estate abroad, and to keep accounts in foreign countries, subject only to reporting to the National Bank. The Act defines further 'direct investment' and indicates when a foreign exchange license or foreign exchange permit is required. Accounts in banks, claims, and investments abroad are subject to reporting to the Czech National Bank; no permit is required.

The acquisition of real property by foreigners is allowed on the following conditions:

- Foreigners can acquire real property with the exception of agricultural and forest land only if they have Czech citizenship, a permanent residence permit, or a residence permit as EU and EEA citizens. Other foreigners can acquire property in the Czech Republic only by inheritance or marriage with a Czech citizen and so on;
- A foreign company can acquire real property if it establishes a company or a branch and is authorized to exercise business activity; and
- A company under Czech law is created by one or more foreign natural persons or foreign corporation(s).

### **Banks, Investment Companies, and Funds**

According to Act Number 21/1992, as amended 17 times, a bank may be established only with a license of the Czech National Bank. A foreign bank that wants to establish a branch office or a subsidiary in the Czech Republic also must apply with the Czech National Bank, and the decision is also subject to the consent of the Ministry of Finance.

Relevant for consideration of the application are the size of capital and other financial resources given by the foreign bank to the disposal of the branch office, technical and organizational conditions for the exercise of the proposed functions, qualification and integrity of the leading personnel of the branch office, the substantiality of the economic

calculations, economic need, and reciprocity. The minimum registered capital of a commercial bank is CZK 500-million. For foreign investors there are certain restrictions for ownership in Czech banks.

Banks with their seat in EU countries do not need a license if they obtained the license in their home country and if they follow the EU legislation. Some of them intend already to open their branch.

The activities of investment companies, investment funds, and unit trusts are governed by the Investment Companies and Investment Funds Act Number 248/1992 Coll. An investment company accumulates pecuniary means through the sale of participation certificates and from these means creates unit trusts, which is the joint property of holders of such certificates. An investment fund accumulates pecuniary means by issuing shares. Such means are used for investments. A license by the Securities Commission is required for the establishment of an investment company or an investment fund. These companies and funds administer chiefly the investments of citizens under the privatization voucher system who decided to entrust the points to them. The Czech National Bank Act<sup>20</sup> established that bank as the central bank to set interest rates and to supervise financial markets and the banking sector.

### **Money Laundering Act**

The Money Laundering Act, applicable as from 1 July 1966<sup>21</sup> contains measures against legalizing the proceeds from criminal activity and was amended seven times to meet the demands of international efforts to fight these illegal activities. Such activities are defined in detail. Banks, the Securities Center, persons dealing with immovable property, auditors, tax advisors, persons accepting cash payments over EUR 15,000, and even legal counsels are under certain circumstances obliged to identify the parties and to report the transaction.

### **Securities Act**

The Securities Act<sup>22</sup> (amended 19 times) applies to various securities, including shares, certificates, bonds, investment vouchers, bills of exchange, checks, and bills of carriage, among others. The administrative body and supervising body for the capital market is the Czech National Bank established by Act Number 15/1998 Coll.

### **Bonds Act**

The Bonds Act<sup>23</sup> defines a bond as a security. Emissions are subject to the approval by the Securities Commission. Bonds may be issued also by a person having their seat in the EU and having a bank license.

### **Act on Bills of Exchange, Promissory Notes and Checks**

The Act on Bills of Exchange, Promissory Notes and Check<sup>24</sup> regulates in detail these instruments, procedures, and resources for non-acceptance and non-payment and is based on the Geneva Convention.

### **Insurance**

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<sup>20</sup> Act Number 6/1993.

<sup>21</sup> Act Number 253/2008 Coll.

<sup>22</sup> Act Number 490/2004 Coll.

<sup>23</sup> Act Number 288/2006, and Act Number 346/2008 Coll.

<sup>24</sup> Act Number 191/1950 Coll.

Act Number 363/1999 Coll. (amended by Act Number 39/2004 Coll.) provides for establishment, operation, and control of insurance companies and regulates in conformity with EU legislation insurance and re-insurance activities and additional pension insurance. Permission is granted by the Ministry of Finance. For EU companies, notification to the Ministry of Finance is required in co-operation with the administrative authority in the home country.

Foreign insurance companies were allowed, until May 1992, to have only commercial representative offices in the territory of the Czech Republic and could participate in local companies up to 45 per cent of their capital. As from June 1992, they can apply for a permit to operate in the Czech Republic in their own name or through their branch.

The application for a permit includes: name, legal form, seat, scope of business, branch of activity, extent and way of creating registered capital, statutes, business and reinsurance plan for the first three years, and a draft of general insurance terms. The insurance company must keep certain reserves in a bank. The registered capital is, depending on the insurance branch, from CZK 60-million up to CZK 200-million; for re-insurance companies, it is at least CZK 1-billion.

The State will exercise strict control and supervision of all activities in insurance business in the Czech Republic or having a seat there. In case of violation of obligations, the company may be called on to remedy the situation or must terminate its activities temporarily or permanently. For activities without a permit or for false information in the petition or for violation of the obligation for secrecy, a penalty might be levied up to CZK 100-million.

### **Capital Markets**

Act Number 256/2004 Coll. regulates transactions on the capital market, in particular:

- Investment services, including trading with securities, also in other EU countries and by other EU brokers;
- Investment instruments market, including Stock Exchange and trading outside it;
- Evidence of securities, including book-entered shares;
- Protection of the capital market and investors; and
- State supervision.

### **Tax Aspects**

The old tax system was replaced in a tax reform, which became effective on 1 January 1993. The fiscal year is the calendar year but may be set differently. Taxpayers in the Czech Republic are subject to the following taxes:

- Corporate Income Tax: 20 per cent in 2009, and 19 per cent in 2010;
- Personal Income Tax: 15 per cent flat rate: (i) 15 per cent on income from dividends gained by foreign Czech residents, (ii) 5–15 per cent from dividends transferred from the Czech Republic, (iii) 5 per cent of income from collective investment funds;
- Value Added Tax (VAT): 10 per cent (specific services and selected goods) or 20 per cent (goods and selected services);
- Excise Tax: levied on petrol and petrol derivatives, alcohol (beer, wine), and tobacco;
- Road Tax: cars: CZK 1,200–4,200; trucks: CZK 1,800–50,400;
- Real Estate Tax: according to type, location, and purpose of use of the real estate;
- Real Estate Transfer Tax: 3 per cent;

- Inheritance Tax: 3.5–20 per cent; and
- Gift Tax: 7–40 per cent for non-related persons (close relatives tax free).

### **Personal and Corporate Income Tax**

All Czech tax residents are subject to these taxes on their worldwide income, while Czech tax non-residents are taxed only on their Czech source income.

The tax residency of an individual person is defined as a permanent address in the Czech Republic (ie, a permanent home that indicates his/her intention to live there continuously) and/or 'a usual residence' in the Czech Republic (ie, individual's total amount of days resided in the Czech Republic equals or exceeds 183 days per year). The tax residency of a legal entity is a seat or a place of management in the Czech Republic.

### **Excise Tax**

This tax applies to hydrocarbon fuels and lubricants, spirits and distilled liquors, beer, wine, and tobacco products that are produced in or imported to the Czech Republic. The tax is calculated as a fixed amount per unit of the product concerned and is levied on the producer (importer).

### **Road Tax**

Road tax is payable on vehicles with license plates of the Czech Republic or registered abroad that are used for business purposes in the Czech Republic. The tax period for foreign vehicles is the period between the entry to and departure from the Czech Republic. The tax is levied by the customs authorities and is payable on entering the country.

### **Real Estate Tax**

Real estate taxation comprises a tax on land — land tax — and a tax on structures — building tax. Real estate tax is generally payable on an annual basis by the registered owner of the land or buildings, although in very specific cases the user or the leaseholder is the payer. All property owners must file tax returns to their financial authorities by 31 January only for the first tax period (calendar year) and only when changes, e.g., change of name, occurs. Both land tax and building tax are multiplied by a coefficient that varies according to location, ranging from 0.3 to 5 (the highest coefficient is applicable in Prague).

### **Real Estate Transfer Tax**

If not subject to tax exemption, real estate transfer tax is charged at a uniform rate of 3 per cent of the sale price of a property, or the usual market price, whichever is higher, and is payable by the seller (the buyer is a guarantor).

### **Inheritance Tax**

Inheritance tax is payable in case of receipt of property by an inheritor due to the death of a testator. Property includes immovable (land, building), movable property, securities, and so on. The receipt of immovable property located in the Czech Republic is subject to inheritance tax, regardless of the residence of the testator/inheritor. The inheritance of movable assets is in principle subject to Czech tax if the testator was a Czech citizen and/or if the movable property was located in the Czech Republic.

### **Gift Tax**

The receipt of assets without consideration is subject to a gift tax. If property is given to a Czech individual or entity, then the recipient has to pay the gift tax. If property is given to a foreigner, the gift tax has to be paid by the Czech donator.

### **Consumption Tax**

On petrol, petrol derivatives, gas, spirit, beer, wine and tobacco products.

### **Local Taxes**

There are no local taxes to be paid by companies.

The Czech Republic has concluded over 80 double taxation treaties, mostly based on the OECD model treaty modifying the taxation of all types of income or property, to be consulted in each particular case as the tax level in these treaties is mostly lower or even zero.

Assets are depreciated by either a straight line or accelerated methods, the terms ranging from four to 50 years.

### **Other Taxes**

Foreigner residents in the Czech Republic are subject to the same tax rates for employment and other income as Czechs. However, double taxation agreements, concluded with many countries, are applicable.

Under the present legislation, foreign and domestic companies enjoy a special tax treatment, eg, tax holidays for investments above US \$10-million. The system does not distinguish adequately between regions or branches of the economy.

### **Customs**

Customs Act Number 13/1993 (amended 24 times) contains in 329 sections the basic rules concerning customs duties, control, exports, imports and transits, as well as the rights and obligation of customs authorities and customs proceedings. The legislation is subordinated to EU binding regulations 2913/1992, 2454/93, 918/1993, 3330/1991, and 2658/77. The Republic's authorities are the General Customs Directorate, directing the regional and the individual Customs Offices. The table tariff and the procedures are in accordance with GATT obligations, of which Czechoslovakia was a founding member.

The Act regulates:

- The data processing;
- The obligation, authorization, and means of the customs officers;
- Compensation for damages;
- Supervision;
- Import and export of goods;
- Approved customs determination;
- Customs regimes;
- Special proceedings;
- Customs debt;
- Customs offenses;
- Customs pledge; and
- Secured goods and their sale.
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Exported goods are subject to customs duty only if this is provided for by the Customs Act. No customs duty is levied on exported goods. Restrictions are based on

antidumping measures, licenses, international control regimes, quality inspection, and so on. International agreements have priority over domestic laws. Duties for commercial goods are assessed according to the Harmonized System of Designation and Coding of Goods. Goods imported temporarily may be re-exported free of charge. Cars may be released for free circulation without a duty on condition that they will be re-exported. Free circulation is also, in some cases, allowed prior to clearance procedure.

Assets (corporate capital) of joint ventures are duty free. The law provides also for establishment of free customs zones and free warehouses. The first zone in Ostrava was managed by a joint stock company, including as stockholders the Mosnov airport and the city of Ostrava. For commercial and production activities with foreign cooperation, the area in the future should comprise 25 hectares. More free zones are available elsewhere with investments of the State and municipalities in the infrastructure.

The tariffs system is created by a set of rules contained in Act Number 113/1997, Decree Number 480/2001, and Order Number 199/2004 Coll. specifying types of tariffs, customs tariff, value for customs purposes, free admission, customs regimes, bill of entry, certificate of origin, customs proceedings, tariffs notes, and generalized system of preferences.

The law and unified customs tariffs and minimal customs barriers make the market as liberal as in OECD countries.

Foreign investors are to be encouraged by a customs duties exemption on imports of components and material used in manufacturing or as capital investments in companies where foreign capital participation exceeds 40 per cent.

The average level of import duties is approximately 6 per cent, but is much higher on certain goods such as cigarettes.

### **Court and Administrative Charges**

These charges are levied separately for each type of proceeding, at the time of filing the application or motion at a fixed amount or as percentage of a claim. Exempt are persons enjoying diplomatic and consular immunities and certain types of claims.

Court charges are either 4 per cent of the claim for each instance, with a minimum CZK 600 and maximum CZK 1-million, or fixed amounts, eg, for company registration CZK 5,000; amendment costs CZK 1,000; petition to summon the shareholder's meeting of a joint stock company CZK 1,000, and bankruptcy petitions CZK 50,000.

### **Insolvency**

The regulation of insolvency in the Czech Republic is contained in the Act on Insolvency and the Methods of its Solution (Insolvency Act)<sup>25</sup> as subsequently amended. The debtor is insolvent if it has more creditors and financial obligations older than 30 days after the day due and it is not in a position to settle these obligations (is financially insolvent). It is assumed that the debtor is not in a position to fulfill its financial obligations if it stopped settlement of a substantial part of its financial obligations, or does not fulfill them for more than three months after the day due and in some other cases. The debtor is insolvent also if it has more creditors and the total of its liabilities exceed the value of its

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<sup>25</sup> Act Number 182/2006 Coll.

assets (having regard to the further operation of its enterprise). Imminent insolvency is established if with regard to all circumstances it could be reasonably assumed that the debtor will not be in a position to settle a substantial part of its financial obligations in an orderly way and on time.

It is sufficient that one creditor or the company itself file the petition for insolvency with the court. The company is obliged to file an insolvency petition without delay after it learns or should have learned about its insolvency. The court then institutes insolvency proceedings within two hours after receipt of the insolvency petition by publication on the Internet. The debtor may combine the petition with the motion for reorganization or discharge from debts. As from that moment the debtor is obliged to refrain from disposing its assets, apart from the operation of the business in the ordinary way. The court may rule by preliminary injunction that obligations due to the debtor be fulfilled not to the debtor but to the preliminary trustee.

The debtor may petition for a moratorium for no more than three months when it is not possible to decide on bankruptcy. The insolvency court will rule on insolvency if it is proved or established by evidence that the debtor is insolvent or that it is under the threat of insolvency. If the solution by reorganization or discharge from debts is excluded, the insolvency court will pronounce bankruptcy on the assets of the debtor. However, only a quarter of insolvency petitions end with such a court ruling.

Bankruptcy proceedings are conducted in the Czech Republic in the same way as in other countries, sometimes for a long time, even several years. This depends on when the insolvency trustee will be able to compile and enforce all assets, including claims of the debtor and, in particular, to review the claims of the creditors and on whether the trustee will recognize them or contest them. Any other creditor may contest any claim and thus separate court proceedings must be instituted for recognition on the claim, which may last several years. Secured creditors are in a better position in bankruptcy proceedings because their claims are secured by liens, rights of retention, transfer of immovable property restrictions, secured assignment of right or assignment of claim for the purpose of security or similar rights according to foreign legal regulation. The time of establishment of the lien or the security is decisive for the order of distribution.

Insolvency trustees attempt always to sell as soon as possible the assets of the debtor, often as a going concern. This is an opportunity for competing companies to acquire the enterprise of the bankrupt for a lower price. The ruling on bankruptcy does not mean an end of the operation of the debtor's enterprise; this ends only with the sale of the enterprise. For the sale of the debtor's enterprise by a single contract, the consent of the insolvency court and creditors committee is required. The insolvency trustee then at the end submits to the court the final report and the scheme for distribution of the assets among the creditors, what amount should be paid for each claim. All creditors included in the scheme are satisfied proportionally according to the size of their claims.

### **Restructuring**

In restructuring proceedings, the debtor's business is preserved and operated under a restructuring plan supervised by creditors. The creditors' claims are satisfied based on an approved plan using the proceeds from the debtor's operations. Once the obligations of the debtor as set forth in the plan are fulfilled and the aims of the reorganization plan achieved, the bankruptcy proceedings are terminated and the debtor's enterprise can continue with its ordinary activities as it did before the reorganization. Unless agreed

between the debtor and its creditors (both secured and unsecured), a restructuring is only available for entrepreneurs whose annual gross revenue was at least CZK 100-million (about US \$4.5-million) or which has at least 100 employees.

#### **Debt Clearance**

In debt clearance proceedings, an eligible debtor is able to propose a payment to creditors of less than 100 percent and that portion of the debtor's debts that is unsatisfied is extinguished. Debt clearance proceedings are only available to debtors with no more than 50 creditors and which are either natural persons or businesses with less than CZK 2,000,000 (about US \$90,000) in gross revenues in the last fiscal or calendar year.

#### **Other Modifications**

Cross-border insolvencies within the European Union are directly regulated by Council Regulation (EC) Number 1346/2000 on insolvency proceedings. All of the EU laws and regulations, including the insolvency regulation, became binding on the Czech Republic when it joined the EU on 1 May 2004.

#### **Protection of Economic Competition**

Act Number 143/2001 Coll. on the protection of economic competition attempts to create conditions against monopolistic practices and the establishment or abuse of dominant positions on the market. Formal competition rules are equivalent to those in the European Union. EU regulation has precedence over Czech legislation in cross-border transactions. The law provides for close co-operation with the EU Commission (accepts priority jurisdiction also by other EU Offices). Foreign investors having in the Czech Republic a company or residence are treated on the same basis as Czech firms. The Act also covers activities abroad if the consequences are felt on the local market. The extra-territoriality does not extend to conduct having an effect on a foreign market, unless international agreements state otherwise.

Cartel agreements leading or likely to lead to limitation of economic competition, horizontal or vertical, are impermissible or invalid unless otherwise provided by that Act and unless an exception is granted by the Office for Protection of Economic Competition. Such cartel agreements include, in particular, the fixing of prices and other conditions binding on the parties, distribution of markets and sources, discrimination of certain customers, and limitations on access to the market for non-members. Abuse of dominant position on the market is prohibited.

Agreements on merger of enterprises are subject to the permit by the Office if they lead or can lead to the restriction of economic competition. The criterion is world-wide net turnover of all merged competitors higher than CZK 5-billion or on the local market over CZK 1.5-billion, if at least two of the merged competitors reached at least CZK 250-million net turnover each. The petition for permit is to be submitted within seven days after signing of the merger agreement. No prior notification is required but a petition may also be filed before contract conclusion.

Any enterprise that is not subject to any competition (monopoly) or substantial competition (dominant position) is obliged to report this fact to the Office.

The Office for Economic Competition may request information, approve agreements, grant exceptions, prohibit implementation of agreements and mergers, order remedies, issue injunctions, carry out searches in premises, and levy penalties for violation of this

law of up to 10 per cent of the net turnover of the last financial year. The Office also keeps a register of cartel agreements.

Disputes on impermissible competition are decided by the court, which can decide on restraint, remedy, satisfaction, compensation for damages, or handover of unauthorized benefits, together with publication of the judgment.

### **Public Procurement**

Public procurement is regulated by Act Number 137/2006 Coll., consisting of 160 Sections, in conformity with EU legislation, accompanied by the Concession Act<sup>26</sup> enabling the co-operation of public and private sectors (PPP). The Act defines the circle of persons subjected to this Act, the procedure of procurement, six types of proceedings, qualification of suppliers, tenders, and supervision.

The threshold is different for supplies and services (CZK 4,290,000 or CZK 6,607,000) and construction works (CZK 165,288,000). Evaluation of offers is made by a committee according to given criterions. The supervision is made by the Office for Protection of Economic Competition. Conciliation proceedings may be petitioned before the EU Commission.

### **Labor Law**

#### **General**

Act Number 262/2006 Coll. represents a modification of the pre-revolutionary Labor Act of 1965.

After declaring certain general principles of labor relations, the Act defines in 395 articles the application of the Act, the subjects of the labor law relations and conditions of these relations, provides for working time and time for relaxation including vacation, and contains regulation of wages, safeguards and health protection, and care for employees, including working conditions for women and minors. Specific provisions are contained for compensation for damages and for labor disputes. Termination of an employment relationship by employers is strictly regulated.

Employment is based on a written labor contract or, in certain cases, on election or appointment (for managers). Labor contracts must provide for the type and place of work and for the starting date, for an indefinite or fixed time. The trial period may be agreed for up to three months. The parties may agree other conditions freely, eg, a non-competition clause applicable up to one year after termination, with penalty for violation and compensation for such undertaking.

Under Employment Act Number 1/1991 Coll., foreigners have the same rights and obligations as Czech employees but have to previously obtain the work and residence permit.

#### **Termination of Labor Contracts**

The labor relationship may be terminated any time by a written agreement. The employee may give a two-month notice without reason. The employer may give notice only in situations envisaged by the law (reorganization, reduction of staff, loss of

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<sup>26</sup> Act Number 139/2006 Coll.

qualification). For exceptional reasons, termination of contract may be immediate by either party. In exceptional cases (disease, military service, pregnancy, or care of a child younger than three years), notice is not allowed.

Notice or termination of labor contracts is to be discussed with the trade union without its right of veto. Consent is only required for trade union functionaries, even one year after office expiry. In certain cases of labor contract termination the employer is obliged to pay to the employee three months' severance pay.

### **Working Time**

Working time is generally 40 hours per week, and flexibility is allowed. For persons under 16 years of age, it is 30 hours. Vacation leave is four weeks. The average monthly wage in 2007 was CZK 21,470 (EUR 840). The minimum monthly wage is CZK 8,000 (EUR 300). The existence minimum is CZK 3126 (EUR 125).

### **Employment Act**

Employment Act Number 435/2004, consisting of 151 articles, defines the right to employment, protection against unemployment, prohibition of discrimination, and financial support of job seekers. The Act regulates also the employment of foreigners which is restricted and who need a work permit and a residence permit (with the exception of EU citizens).

### **Health and Social Security**

Mandatory contributions to the social insurance system (health insurance, pensions, unemployment, sickness, and other benefits) amount to 35 per cent of the employee's gross salary for the employer and 12.5 per cent for the employee. This is applicable also to all companies registered in the Czech Republic. Insurance is mandatory for persons domiciled in the Czech Republic or persons engaged in a relationship with an employer having its seat in the Czech Republic. Self-employed entrepreneurs pay 45.6 per cent contributions (social security contributions are not paid from income exceeding four times the average monthly salary).

### **Work Permits**

Foreigners may be employed in the Czech Republic only if they possess a residence permit and a work permit granted by the appropriate District Labor Office<sup>27</sup>. A work permit is issued for a maximum period of one year but may be extended. A work permit is also required for short-term employment up to three months. EU nationals do not need a work permit and have no restrictions in employment as compared to Czech citizens in Germany, Austria, and many other EU countries.

### **Residence Permits**

Most visitors are not required to have a visa for the first 30 days. A foreigner may be requested to present financial means for his/her stay and health insurance document. Visa-free travel agreements have been concluded with more than 50 countries. Reciprocity is being applied, with the exception of the United States.

Short-term residence is permitted for no more than 180 days but may be extended.

The Act on Foreigner's Stay and Residence in the Czech Republic Number 326/1999

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<sup>27</sup> Act Number 9/1991 Coll.

defines the entry into the Czech Republic, temporary stays and permanent residence, their termination, reporting and recording, duties of foreigners and other persons, and offences. A long-term residence visa for more than 90 days is granted on application to attain an objective for no more than one year but may be extended repeatedly. The application must provide the reason, evidence of means of subsistence and accommodation, and an extract from the Czech and country of origin penal registry. Executives and members of boards of commercial companies who are foreigners from EU countries and other EU nationals (also Iceland, Liechtenstein, Norway, and Switzerland) apply for their Czech residence visa if they want to stay more than three months with simplified procedures. The Czech Republic may also issue a unified Schengen visa and accepts such visa issued by other EU countries.

A permanent residence permit is granted only in case of bringing together a family, in other humanitarian cases, or in cases of foreign political interest. Application processing takes about three months. A permit is valid for 10 years. The place of residence is to be reported to the police if the stay is longer than 30 days for foreigners not requiring a visa; for visa holders, within three working days<sup>28</sup> Stricter regulation was adopted in 1999 due to the increasing illegal immigration; an amendment of existing legislation entered into force in 2006.

### **Environmental Protection**

Air and water pollution and soil contamination in the Czech Republic were among the worst in Europe due to exploitation of natural resources, brown coal burning, and the use of outdated technologies but has improved considerably in the past 15 years especially as regards air and water pollution.

The state has attempted to remedy this situation by various methods, including legislation. Environment Act Number 17/1992 Coll. defines certain rights and obligations in that field.

The general objective is based on the environmental policy document of the European Union with priority measures for individual environmental media and for individual economic and social sectors. A number of new legislations are being prepared; on accession to the EU a few transition periods were granted.

Everyone is obliged to abide by conditions set forth for environmental protection, in case of an unlawful act to bear the consequences and at his own expense re-establish the natural functions of the disturbed ecosystem. If this is not possible, compensation for damages may be applied together with a penalty of up to CZK 1-million and eventual penal prosecution. Special regulations set technical limits for various types of pollution and contamination and provide time limits for measures to abide by them. One of the first is the Act on Protection against Air Pollution Number 309/1991 Coll., setting a limit on air pollution within five years. Penalties may be levied from CZK 500 to CZK 10-million. Natural persons and legal entities pay taxes for the exploitation of natural resources and, on the other hand, may claim benefits for the protection of environment such as tax reduction, or credits and subsidies.

Foreign investors often disclaim liability for environmental damages that arose prior to their contractual arrangement with the State on capital investments.

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<sup>28</sup> Act Number 1/1992 Coll.