

DOING BUSINESS IN THE CZECH REPUBLIC



2019

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1. Czech Republic – Overview



The Czech Republic is located in the heart of Europe, between Germany, Poland, Slovakia and Austria. Its population is approximately 10.5 million. The capital of the country is Prague (1.3 million) and other major cities include Brno, Ostrava, Plzen and Olomouc. The Czech Republic is a parliamentary democracy and its economy has long been considered to be the most advanced from all other transition economies (after the breakdown of communism). Economic policies of the state are consistent and predictable. The Czech National Bank continues to maintain a strong and stable currency. The Czech Republic is the member of the European Union, OECD, and NATO as well as of international organizations and institutions such as the WTO, IMF, WB, WIPO, OSCE, and the Council of Europe. Czech legislation is fully compatible with EU standards. For the time being, the Czech Republic maintains its own currency **CZK** – the **Czech koruna** (1EUR = approx. CZK 26 or 1US\$ = approx. CZK 23 as of April 2019) – which is fully convertible. The Czech Republic does not intend to join the Eurozone in the next five years. All international transfers of profits or investment funding can be carried out without limitations. The Czech Republic is a member of the Multilateral Investment Guarantee Agency (MIGA), which is a member of the World Bank Group established for the protection of investment. The Czech Republic also signed a number of treaties with other countries on the protection of foreign investment and on the avoidance of double taxation. The Czech Republic is an open economy with few limits on doing business.

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2. HOLEC, ZUSKA & PARTNERS

HOLEC, ZUSKA & PARTNERS is a general practice, middle-sized full service commercial law firm formed in 1990 by Pavel Holec, located in Prague, the capital of the Czech Republic. The firm provides its clients with an entire spectrum of consulting and legal services mainly in the business area. The firm's lawyers have extensive international experience and expertise in corporate and commercial law, general legal practice, employment law, insolvency and dispute resolution. We count among our client base a number of global corporations and their local subsidiaries and joint-venture enterprises, as well as major Czech corporations and Czech government units. Where multi-disciplinary advice is required, HOLEC, ZUSKA &

PARTNERS routinely co-operate with the Czech branches of the major auditing houses dealing with local, cross-border and international issues.

3. Czech legal system

The Czech legal system stems from and in many respects loosely copies the neighbouring German and Austrian legal systems. It is a **civil “continental” law system** which is characterized by a large number of laws and the underlying implementing regulation, which undergoes frequent changes. A few years ago a major recodification of private law was adopted including a new legal regulation of business corporations. Namely, the most significant changes have been introduced by the new Civil Code (Act No. 89/2012 Coll.) and the Act on Business Corporations (Act No. 90/2012 Coll.), both effective as of 1 January 2014. In particular the business corporations have had to get prepared for the changes in the Czech legal system, especially for the requirements of the new enacted law. For example, the new law stipulates that provisions of a business corporation’s memorandum of association that are inconsistent with the mandatory provisions of the new Act on Business Corporations are abolished as of January 1, 2014 and requires every business corporation to reconcile its memorandum of association (the founder's deed) with the new regulation latest by 30 June 2014 and to deliver it to the registry court; otherwise, the court may cancel the corporation’s existence. Similarly, it requires adapting every executive service agreement concluded before January 1, 2014 to the requirements of the new Act on Business Corporations by latest June 30, 2014; otherwise, the performance pursuant to such agreement is according to this law free of charge. The new law further states that the business corporation’s founded before 1 January 2014 shall partially remain to be governed by the former Commercial Code (Act No. 513/1991 Coll.) but they have an option to make themselves fully subject to the new Act on Business Corporations. Although the Act requires this option (a so called “opt-in”) being used within a period ending on 31 December 2015, the business corporation are apparently (i.e. in line with the prevailing legal view of the doctrine as well as the case-law of the Supreme Court of the Czech Republic) allowed using it even thereupon. Beside the above mentioned, there are many other changes in the Czech legal system due to the new enacted law. It is recommended, the more so as the new enacted law is still quite fresh, to be aware in particular of new tendencies of its interpretation and practical application, its further amendments as well as development of relevant case-law of the Czech courts.

The new Civil Code was passed in the Czech Republic after half a century. The private law has been completely reorganized due to it. The main changes include formulation of new general principles of private law, new juridical institutes and terminology modifications. Even some totally new legal concepts have been established. This recodification of private law represents the largest structural change of the legal system, since the transformation changes after the fall of socialism in 1989.

Notwithstanding, the Czech legislation has been successfully brought into full compliance with the applicable EU legislation during the last decades. Principle areas of law and procedure are codified (Civil and Criminal Codes, Codes of Criminal, Civil and Administrative Procedure, Labour Code, Building Code etc.); the system of legal sources is hierarchical, forming a pyramidal structure of legal force within the legal system; only written law (legislature) is, at least in theory, recognised as source of law, although the so-called “judicature”, i.e. decisions of higher courts, is routinely used to clarify and interpret the written law.

4. Judicial system / Dispute resolution

Czech judicial system has been undergoing a long and painful modernization. While some its parts have already been modernized to provide a timely and quality service without major delays (such as the system of Commercial Registries, which was overhauled to do away with unnecessary formalities, and to deliver fast and effective registration of companies and registrations of the mandatory corporate acts, or the Insolvency Courts), it is especially the first instance courts that are grossly overloaded with case work.

Judicial power in the Czech Republic is carried out by independent courts. *The Supreme Court* (in Brno) is at the top of the hierarchical structure of the courts hearing civil and criminal matters while the *Supreme Administrative Court* (also in Brno) was established as the highest judicial instance for judicial review of a decision issued in administrative proceedings. The structure of the courts further includes 2 *High Courts* (for Czech lands in Prague and to Moravia and Silesia in Olomouc), 8 *Regional Courts* and 86 *District Courts*.

According to the Constitution of the Czech Republic, *the Constitutional Court* (in Brno) is the judicial body established for the protection of constitutionality. According to Article 87, paragraph 1, letter d) of the Constitution, the Constitutional Court decides on constitutional complaints filed against final decisions or other public authority intervention in the constitutionally guaranteed fundamental rights and freedoms.

Litigation in Czech Republic, although improved, can take a long time, in many cases years, even in trivial matters. For these reasons, in commercial sphere at least, a system of commercial arbitration courts had been established. There are just three institutionalized arbitration courts in the Czech Republic.

The first one of them is the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic established in 1949. It is a chosen venue for a number of local as well as cross-border and international disputes. The arbitration proceedings before the Arbitration Court are usually conducted in accordance with its Rules published in the official Commercial Bulletin unless the parties to the dispute have agreed

otherwise. It is also the only permanent arbitration court with the general sphere of activity pertinent for the determination of **property disputes** in conformity with the Act No. 216/1994 Coll. Its awards are final enforceable on national level as well as abroad.

The second one of the institutionalized arbitration court is the Exchange Court of Arbitration which is attached to the Prague Stock Exchange and, if agreed by the parties involved, resolves, in particular, disputes arising from trades on the regulated market organized by the said Stock Exchange, as well as disputes from other trades in investment instruments or commodities and capital, cash, insurance, or retirement income insurance market trading.

The last one of the institutionalized arbitration court is the Arbitration Court of the Czech Moravian Commodity Exchange Kladno resolving disputes arising between contracting parties who conclude a commodity exchange trade on the said Commodity Exchange.

In line with the fact that the **alternative dispute resolution (ADR)** is generally seen being a faster, cheaper and more effective way of handling disputes in comparison to court procedure, the Czech regulation provides for the possibility to choose *mediation* as a form of ADR. It is regulated by the Act on Mediation (Act. No. 202/2012 Coll.), under which the parties of a dispute may voluntarily choose, if they will try to solve their dispute by means of mediation, i.e. with help of a mediator. Mediator is a neutral person which role is to help the disputing parties in their dialogue aimed at solving an existing dispute. Mediation is possible in all matters in which the parties are free to dispose of their own rights, thus in commercial matters too. Mediation may be initiated not only by the parties, but also by a judge or it may be rendered obligatory by law. Mediation suggested by a court in a dispute that is pending before it does not aim at depriving a court from his power to conciliate or to judge, but rather as a complement to its function. A court decides whether it approves a mediation agreement concluded under the Act on Mediation.

Financial Arbitrator is another tool for ADR which applies in matters regarding **financial services to consumers**, such as transfers of funds, settlement adjustments, collection forms of payment, use of electronic payment instruments, provision of credit, building saving, life insurance or collective investment products. Financial Arbitrator is a conciliation body appointed by the Czech Government to settle disputes between financial institutions (e.g. banks, credit providers, brokers etc.) and their clients.

Similarly, *Czech Telecommunications Office* has an exclusive jurisdiction over certain type of disputes between service providers under the Act on Electronic Communications (fixed line and mobile operators, Internet providers, television and radio broadcasts, etc.) and consumers.

The *Energy Regulatory Office* then decides disputes arising from the contractual relationship between licensees or between licensees and customers under the Energy Act, disputes over

access to the transmission system or distribution system, disputes over the purchase of electricity from renewable energy sources or the entitlements to green bonuses.

Beside the above mentioned Financial Arbitrator, the Czech Telecommunications Office and the Energy Regulatory Office as special bodies of ADR (alternative dispute resolution) within their special scope, the *Czech Trade Inspection Authority* became as of February 2016 the general body of **ADR of consumer disputes**. In addition, a legal entity established to protect consumers or professional association with compulsory membership authorized by the Ministry of Industry and Trade of the Czech Republic may become a body of ADR of consumer disputes (e.g. the Czech Bar Association is competent for settling disputes between attorneys and their clients resulting from provision of legal services).

The ADR procedure can be initiated by a consumer in writing or orally or electronically via online form within 1 year after first contacting of the entrepreneur with his or hers claim or complaint and the initiation must among others contain a proof that the consumer tried at first to resolve the dispute with the entrepreneur directly but did not manage it (e.g. the complaint was rejected). If chosen by the consumer, the entrepreneur has to follow the ADR procedure, in particular to cooperate with the ADR body (e.g. to provide the ADR body with a statement to the facts claimed by the consumer in the initiation within 15 days upon being notified on the initiation). However, the right of the both parties to initiate a court action is not restricted by the initiation of the alternative dispute resolution procedure.

The consumer disputes shall be settled by means of *conciliation*, i.e. in a process similar to mediation resulting into a private law agreement between the consumer and the entrepreneur being the parties in dispute. The procedure is free-of-charge and parties bear related costs. The out-of-court resolution of a consumer dispute shall end within 90 days (180 days in difficult cases) from the procedure initiation. If no agreement is reached between the parties, the dispute can be a subject to a court action.

Recently, the **Online Dispute Resolution (ODR)** platform was concurrently launched by the European Commission as a mean to resolve contractual disputes between consumers and traders arising from the online purchase of goods and services via ADR. Consequently, all online traders and online marketplaces (e.g. eBay and Amazon) selling goods and services through a website or other electronic means (e.g. social media, email, telephone and text messages) to consumers anywhere in the European Union are obliged to include their e-mail address as well as an electronic link to the [ODR platform](#) on their website which will enable consumers to submit complaints to the ODR platform (irrespective of whether the use of ADR is mandatory or not). The main purpose of the ODR platform is to facilitate the agreement of the parties on an ADR provider. The ADR provider shall handle the case entirely online and should reach an outcome generally in 90 days.

5. Establishing business presence

Foreign legal entities may conduct trade activities under the same conditions and to the same extent as Czech entrepreneurs. They are allowed to become founders or co-founders of a company, or may join an existing Czech company. Foreign companies may operate in the Czech Republic either by establishing a Czech company or by establishing a branch. The speed with which one can establish a business presence in the Czech Republic has increased in the recent years. Incorporating a simple limited liability company or a branch of a foreign company (which are usually the two most standard forms to start a business here) takes about a month or less. A company is established by drawing up a notarial deed or signing a memorandum of association, which states the name of the new company, its seat, business activities, executive directors and the details of its founders and their capital contributions. A company starts to exist on the date of its registration into the Commercial Register (usually completed in 5-10 days of filing). All acts undertaken between the moment of establishment of the company and its registration (official start of its existence) need to be retroactively approved by the general meeting of the company (or its (sole) founder(s)). The registration in the Commercial Register is carried out by a court if the all statutory requirements for the formation the new company have been met (validly executed deed of foundation, payment of registered capital, legal title to use its registered office, and others).

As there are no general restrictions on foreign investment, foreign persons can operate a business under the same conditions and in the same extent as Czech persons (with a few exemptions in sectors such as banking or trading in military equipment).

6. Forms of legal entities

As mentioned before, a foreign legal company may establish a branch in the Czech Republic in accordance with the new Civil Code. Regarding the types of companies; the most common are **limited liability companies** (s.r.o.) and **joint-stock companies** (a.s.). These are the capital corporations, where the emphasis is on capital, which is mandatorily created (in the minimum amount prescribed by the law) when a company is formed. Capital corporations are by far the most popular company form used for doing business in the Czech Republic. The other types of companies are personal corporations - a **limited partnership** (k.s.) and an **unlimited partnership** (v.o.s.), where the emphasis is on the role of the partners in the operation of the company. In addition, the Czech Act on Business Corporations, which governs this particular field, recognizes also the **co-operative** (družstvo) as a type of a corporation.

Besides these legal entities, investors may also choose to undertake business as tradesmen (acting under trade licenses issued to them) or to participate in business activities of another in the form of a silent partnership (contractual arrangement).

Finally, also the European forms of legal entities may operate in the Czech Republic, i.e. a **European Economic Interest Grouping**, a **European Company** (*Societas Europaea*) and a **European Cooperative Society**.

Branch

A branch office of a foreign company **is not a Czech legal entity**, but functions as the representative of a foreign company and incurs obligations on the foreign company's behalf. Branches of foreign businesses may conduct business activities in the Czech Republic provided that they obtain a business license and mostly also their registration in the Commercial Register is required. (This rule applies with some exemptions in behalf of the companies from EU member states, e.g. banks having their registered office in an EEA member state may operate in the Czech Republic without establishing a branch, under the single license principle, provided that the performance of such activities does not have the character of permanent economic activity).

- A branch establishment is effected by a simple resolution made by the founder, including details about the founder, the branch's location in the Czech Republic, the scope of its business activities, and the appointment of its head (branch manager).
- The branch must obtain a business license from the Trade Licensing Office for its Czech business.
- Branch offices are only allowed to engage in business activities which correspond to those of the founder.
- The law under which the branch's parent entity was founded also apply to the branch's internal dealings as the branch office itself is not considered to be a separate legal entity and all liabilities incurred through the branch office are the liabilities of the "parent" entity.
- From January 2002, there is no restriction on acquisition of real estate through branch offices of foreign companies in the Czech Republic.
- A branch is subject to corporate income tax on its Czech-generated income.

A limited liability company (s.r.o.)

This is the most common legal form of company for small and medium-sized businesses and subsidiaries of foreign parent companies. Corporate governance is much simpler than of a joint stock company: the *s.r.o.* does not have a separate board of directors as a collective body, and decision-making powers may be delegated to one or more designated persons – executive directors – by the members. The company may be founded either by means of a founder's deed by one entity (whether an individual or a legal entity) or a memorandum of association concluded by several entities or individuals. Such founder's deed or memorandum of association must be executed in the form of a notarial deed. Under the Act on Business

Corporations, each member (whether a legal entity or a natural individual) participates in the company through his “ownership interest” corresponding to proportion of member’s contribution to the company’s total registered capital. This rule may be modified by a memorandum of association.

A limited liability company may have more than one type of ownership interest, to which different rights and obligations attach. A shareholder may hold more than one ownership interest (provided that the founder’s deed or the memorandum of association allows it). A limited liability company does not issue shares. However, the company may issue specific certificated securities representing ownership interest called common shares (kmenový list) in respect of ownership interests whose transfer is not restricted or conditional. Common shares may be transferred to a third party, but not offered to the public or admitted to trading on a regulated market.

A member can transfer his/her ownership interest in the company to another member, without the approval of the general meeting, unless the memorandum of association or the deed of incorporation state that such approval is necessary. A member can transfer his/her ownership interest to a person who is not a member only with the approval of the general meeting. The memorandum of association or deed of incorporation may stipulate otherwise. If a company has a sole member, the ownership interest is always transferable to a third party. The transfer of an ownership interest becomes effective *for the contracting parties*, upon execution of the contract (but not before the consent was given, if needed), and *for the company*, on the day an effective transfer agreement with officially verified signatures is delivered to it. The ownership interest may also be divided, unless the memorandum of association or the deed of incorporation states otherwise.

- Company exists independently of its members (owners), who are not liable for the debts and obligations of the company (its members are liable one and all for the debts and obligations of the company in the amount of total unpaid contributions as recorded in the Commercial Register).
- List of members, amount of each member’s investment contribution, and the names of the supervisory board (if established) members must be registered in the Commercial Register as well.
- The registered capital of a company is composed of the contributions made by the members. Each member must contribute at least CZK 1. No reserve fund must be created.
- A Supervisory Board is only necessary if required by the memorandum of association (i.e. its appointment is at the discretion of the founder(s)).
- General meeting appoints executive directors to act as the statutory body of the company and to run the company.
- No need to appoint auditor unless at least two of the following criteria have been met in the given accounting period and the accounting period directly preceding: (i) yearly

turnover exceeds CZK 80 million, (ii) total assets exceed CZK 40 million, (iii) at least 50 employees in average per year.

- Annual financial statements must be published in the Collection of documents of the Commercial Register.

A joint-stock company (a.s.)

The legal form of a joint-stock company is usually used for establishing of large companies. A joint-stock company is a capital corporation, the running of which involves the shareholders to a minimal extent. Shareholders of a joint-stock company may be legal entities and/or natural individuals. There is no maximum number of shareholders. The registered capital of the company is divided into a certain number of shares; either into a fixed number of shares with a fixed nominal value, or into shares which value differs from the number of issued shares.

Shares may be registered shares (issued to a named shareholder) or bearer shares. Shares may be “certificated” (i.e. physical share certificates are issued either to the bearer or to a registered shareholder). They may also be in de-materialised form, uncertificated (book-entered) shares registered on the shareholder’s account at the Central Securities Depository (a special legal entity), for which physical share certificates are not issued. As of January 1, 2014, certificated bearer shares are no longer allowed and existing certificated bearer shares must be either immobilised (physically deposited) in a bank or exchanged for uncertificated (book-entered) shares.

In contrast to the other types of companies a share in a joint stock company is, as a general rule, freely transferable. Any shareholder can usually therefore freely transfer his/her/its share to any person or entity, without the consent of the other shareholders. Nevertheless, the articles of association may restrict, but not exclude, the transfer of registered shares, (e.g. by making the transfer subject to the approval of one of the company’s bodies).

- The company exists independently of its shareholders, who are not liable for the debts and obligations of the company.
- The amount of a registered capital and extent to which it was paid up, the number, class, type and nominal value of shares, restrictions applying to transferability of shares registered in name, the names and residential addresses of members of both the board of directors and the supervisory board must be registered in the Commercial Register.
- The registered capital must be at least CZK 2,000,000 or EUR 80,000 (for companies which are allowed by a special law to keep their accounts in EUR).
- A reserve fund does not have to be created in principle.

- Annual financial statements must be audited, if reaches at least one of the above criteria mentioned within the limited liability company section, and published.
- A joint-stock company does have a Supervisory Board and a Board of Directors, or alternatively, it can have an Administrative Board and a single director. The choice lies on the articles of association.
- The right to receive a dividend, the pre-emptive right to a share and interchangeable and prior-lien bonds subscription, the right to receive a liquidation share and other similar rights provided by the articles of association may be transferred separately from the share to which the rights are attached.
- A share's issue price may not be lower than its nominal value.

Partnerships (k.s. and v.o.s.)

Limited partnerships (k.s.) and unlimited partnership (v.o.s.) are formed in a similar fashion as other business corporations. An unlimited partnership is a company whose partners are personally jointly and severally liable for the company's obligations in full. A limited partnership is a company in which two types of members participate; i.e. limited partners (*komanditisté*) and unlimited partners (*komplementáři*). Each limited partner is jointly and severally liable for the obligations of the company up to the unpaid amount of his/her capital contribution, as registered in the Commercial Register. Unlimited partners are personally jointly and severally liable for the company's obligations in full. As these legal forms of companies are seldom used by incoming investors into the Czech Republic their particulars are not discussed within the limited space of this brief summary.

Liability

As mentioned above, shareholders of a joint-stock company do not guarantee the company's obligations and shareholders of a limited liability company jointly and severally guarantee such company's obligations only up to the sum of unpaid contributions to the company's registered capital, as recorded in the Commercial Register. The liability of executive directors, directors and board members of Czech companies arises out of their duty to perform their respective offices with due care. They are liable for any damage caused to such company by any breach on their part of this obligation. Beside this, the Czech legislation introduced the concept of criminal liability of legal entities as of January 1, 2012. This concept allows for, in some cases, the prosecution of a legal entity where a crime has been committed to the benefit of such legal entity by its director, employee or other associated person.

7. Data mailboxes

Each company registered in the Commercial Register has a data mailbox which is an electronic storage space created by operation of law. The system of data mailboxes is operated

by the state. Once the data mailbox has been created, access data are generated and delivered to the authorized person (e.g. statutory body of a company). Its purpose is to enable the official electronic delivery of documents, particularly from the public authorities to the entrepreneurs and vice versa. It is important for a company to log in to its data mailbox regularly as a message is deemed to have been delivered to it after 10 days from the day on which such message was placed in the data mailbox by the relevant public authority.

8. Trade licensing

In order to be registered in the Commercial Register all types of the companies are required to obtain a trade license from a wide variety of trade licenses that are granted and operable on the basis of a simple notification – notification-only licenses. The *Trade Licensing Act* distinguishes between two forms of activities:

- a) *Notification-only business*. A notification-only business must be notified to the business license department of any municipal office in the Czech Republic (the “Trade Licensing Office”) which issues an appropriate certificate (a “*živnostenský list*“) confirming that the stipulated conditions for the issue for the trade license have been met. Business activities classified as “notification-only business” are the following types:
 1. unqualified trades (production, trade and services other than those listed in Annexes 1 to 3 of the Trade Licensing Act – e.g. consulting services);
 2. craft trades (e.g. foundry, blacksmithing, grinding and etching of glass, leatherworking); and
 3. regulated trades – necessary professional qualifications (e.g. geological work, accounting consultancy, engineering).
- b) *Licensed business*. Licensed businesses are those, which require a formal trade licence to trade (in Czech: “*koncesní listina*“), and the founders of the proposed business must submit an application to the Trade Licensing Office. This Office then commences a procedure to grant or refuse a licence.

Except for the unqualified trades a trade must be carried out by a qualified person possessing certain educational and practice requirements depending on the type of the trade. In the case of a legal person, it shall appoint its so-called “responsible representative” who is responsible for the due carrying out of a trade and fulfilling trade license regulations.

There exist also a comparably broad area of so called *other business* that is no subject to business registration / licensing by the Trade Licensing Office, but subject to *miscellaneous licences (special permits and authorisations) issued by other authorities* (such as banking business, insurance business, securities, investment funds, pension funds, energy business, waste management, mining activities, lotteries, telecommunications, dealing with military

equipment and so called free professions such as attorneys, auditors, medicine doctors, etc.). For certain of these professions an obligatory membership in a relevant chamber or association as a prerequisite for performing the given profession has been set, but generally speaking, in the Czech Republic, there are no requirements for the businesses to join any chambers of commerce or trade associations.

In many cases a business requires several trade licences in order to undertake its activities. Prior to the incorporation of a legal entity in the Commercial Register, the appropriate Trade Licensing Office must issue a certificate or trade licence to enable the application to be submitted for incorporation into the Commercial Register. It may be advised to consider commencing the business with just those licences that are critical to set up business presence and easy to obtain and to complete the licensing process after the incorporation.

Neither a trade licence (nor the certificate itself) is transferable to third parties.

9. Investment Incentives

The Czech Republic enjoys a strategic location within Europe, educated workforce, competitive infrastructure and developed real estate market and supplier base, and above all it is a safe investment environment. The Czech Republic attracted the largest portion of foreign direct investment from all transition economies since 1990. The Czech Republic offers investment incentives for the manufacturing sector in compliance with Act No. 72/2000 Coll., as amended. Since its inception in 2000 until December 2018, the Czech Republic provided tax and other incentives to over 1000 companies, covering investment in EUR totalling approx. 30 000 million EUR and creating over 190 000 jobs. The state provides incentives (depending on the type of project) of up to 10 years of full (for new facilities) or partial (for existing facilities) corporate income tax relief, transfer of land with technical infrastructure for favourable prices, cash grants on capital investments (in the case of strategic investments), and other incentives related to job creation grants and workforce training and re-training costs compensation. The state aid is provided up to the maximal amount stipulated by the Regional Map of State-Aid Intensity. The maximum state-aid amount is provided, with some exemptions, up to 25% of total eligible costs (0% in Prague). The total amount of the investment incentives (with the exception of training and re-training grants) must not exceed this percentage range, mostly 25% (35% in case of medium enterprises, 45% in case of small enterprises).

Generally, the intention of the legal regulation of investment incentives is to prefer investments focusing on advanced technologies, activities with high added value and high export potential, and the potential to increase the international competitiveness of the Czech Republic.

Availability of these incentives, and conditions upon which they may be granted, as well as other financial support provided with the framework of EU funding, such as the Operational Programme Enterprise and Innovation (OPEI) or Human Resources and Employment, may be assessed upon request. Our firm has extensive experience with incoming investment and established a good working relationship with CzechInvest, the government agency for investment and business development, which evaluates the proposed investment plans before they are passed on for authorization by various other state bodies, and we will be glad to discuss potential plans with prospective investors upon request.

10. Taxation

Corporate Income Tax

In general, taxation legislation is subject to frequent changes as the development of economy warrants. The corporate income tax is set at rate of 19% for calendar year 2019 (the same rate is applicable since 2010). For certain types of legal entities specified in the income tax legislation (investment funds, pension funds), special 5% or 0% corporate income tax rate applies. Tax residency of a legal entity is determined by its registered office (the seat of the company) or the place where it is effectively managed from in the Czech Republic. Czech tax residents are subject to taxes on their worldwide income. Czech tax non-residents are subject to tax generated on income in the Czech Republic. A tax residency arises also, besides forming a legal entity under the Czech law or establishing a branch of a foreign entity, via the so-called ‘permanent establishments’; it is a taxable presence of a foreign entity trading, or rendering services in the Czech Republic, arising on the basis of assignment of an employee or permanent representative in the Czech Republic for at least six months in any 12 consecutive calendar months, or by setting up an office, workshop, sales outlet – in general any fixed place of business - regardless of the six-month condition.

The tax base of the corporate income tax is generally calculated as the difference between income and expenses according to Czech accounting rules, with further adjustments for tax purposes by non-deductible costs and non-taxable revenues and other non-accounting adjustments. In general, all expenses incurred to generate, ensure and maintain taxable income are deductible if documented by the taxpayer, subject to limits specified in the corporate income tax law and in special legislation.

Tax deductible items typically include: operating expenses, salary costs, tax depreciation, tax deductible reserves and provisions, interest (maybe subject also to special rules), royalties and management service fees, etc. Tax non-deductible items typically include: entertainment expenses, gifts and donations, fees paid to members of company statutory and other bodies, non-contractual fines and penalties, interest on credits and loans under thin capitalisation rules etc.

The tax depreciation may be applied for tangible fixed assets valued at more than CZK 40,000 and for intangible fixed assets valued at more than CZK 60,000, if it has an operational life of more than one year. Assets may be depreciated for income tax purpose either under the linear or accelerated depreciation method. Once a method is chosen, it must be applied over the entire life of the asset. Some assets (such as plots of land, artwork, etc.) are not eligible for depreciation.

Tax losses may be carried forward for maximum of 5 years. The carry-back of losses is not permitted. Losses cannot be offset against the profits of another group company. Several anti-abuse provisions govern the utilization of tax losses; for example loss relief may be restricted where there has been a significant change (more than 25%) in the ownership structure of persons or entities directly participating in the equity/share capital of the control of the loss making company or if a merger was carried out. A taxpayer can ask the tax authorities to confirm the applicability of the losses carried forward.

Personal Income Tax

Individuals with a permanent address in the Czech Republic, or physically present in the Czech Republic for more than 183 days during a particular calendar year, are deemed to be Czech tax residents and are taxed on their worldwide income in the Czech Republic (tax relief under the double tax treaties by tax credit or exemption may apply).

Taxable income includes earnings from dependent activities including benefits in-kind, income from business activities, and income from capital, rent and other sources. In general, taxable income consists of all income regardless of whether it is monetary or non-monetary. General taxable income is defined as the difference between actual gross income and allowable expenses incurred in obtaining the income. The current fixed flat rate is 15% for calendar year 2019. Employees are subject to automatic tax withholdings from the start of their employment. The employment tax base is increased by the actual or hypothetical mandatory social security and health insurance contributions paid by the employer. Thus, the effective tax rate is actually higher than the nominal 15% flat rate. An employee's social security and health insurance contributions are calculated as 11% of his or her gross salary. An employer pays additional 34% (33,8% with the effect as of July 1, 2019) of the employee's gross salary to the Czech social security and health insurance authorities.

Generally, income from dependent activities paid by a foreign employer to a Czech tax non-resident is tax-exempt if the time spent on such activities does not exceed 183 days in any 12 consecutive calendar months. This tax exemption shall not apply to income from an activity performed via a permanent establishment. In case of expatriates, i.e. those who are not directly employed by a Czech legal entity, who are assigned to carry out a dependent activity under a service agreement, these must be registered as individual taxpayers with the local Tax Office.

Income is declared through a personal income tax return that is to be filed with the local Tax Office within 3 months after the end of the tax period (i.e. at the latest by end of March), or six months if filed by certified tax advisor.

In 2013, a solidarity contribution was introduced. It applies only to high-earning individuals and only on employment income and self-employment tax base. The solidarity contribution represents a contribution amounting to 7 % of the employment income or self-employment tax base over the range exceeding 48 times the average salary within the calendar year (CZK 1,569,552 for 2019).

Deductions are granted for mortgage interest, life and supplementary pension insurance and gifts. Personal allowances are available to the taxpayer, his/her spouse and children; nevertheless, there are limitations if the lump-sum expense option is applied or in the case of pensioners.

Value Added Tax

The Czech value added tax complies with the relevant EU VAT directives and is imposed on all taxable supplies within the Czech Republic and goods imported or acquired in the Czech Republic.

Taxable supplies within the Czech Republic include provision of services; delivery of goods; transfer and use of rights and transfer of real estate, buildings and structures; acquisition of goods from other EU member states, etc. Businesses are obliged to account for VAT on the import of goods from third countries. However, there is an entitlement to reclaim such input VAT connected with the import of goods. Businesses are also obliged to account for VAT upon acquisition of goods from other EU member states. Certain domestic services are VAT exempt without entitlement to reclaim input VAT (e.g., financial services, insurance services, rent paid to entities not registered for VAT purposes, etc.). Export of goods is VAT exempt. Generally, services provided to an entity subject to tax with its place of establishment in another EU member state, or third country, are not taxable in the Czech Republic. The recipient of the services is obliged to account for VAT in the country of its establishment and there is also an entitlement to reclaim such input VAT connected with such services. On the other hand, businesses are obliged to account for VAT in terms of the reverse-charge principle once they acquire a service from a provider in another EU member state or third country.

Presently, there are two VAT rates: 21% applicable to most of the goods and services, and 15% or 10% to certain selected goods and services (including essential food, books, special healthcare products, medical and social care, certain buildings for residential living, etc.).

All entities (legal and natural) become obliged to register for VAT upon exceeding CZK 1,000,000 (approximately EUR 38,500) turnover in immediately preceding consecutive 12 months period. The registration application must be submitted within 15 days after the month during which the turnover was exceeded. For non-resident businesses, there is no registration threshold, but they must register as a VAT payer if they either make any supply subject to Czech VAT (unless the liability to declare and pay VAT is shifted to the recipient of the supply), or supply goods from the Czech Republic to another EU member state. Voluntary registration is possible if a company renders (or will render) taxable supplies in the Czech Republic. Foreign entities or individuals who do not have a registered office, place of business or fixed establishment in the Czech Republic are obliged to register with immediate effect for Czech VAT if they make a taxable supply within the Czech Republic subject to Czech VAT. The return must be filed and the tax paid within 25 days after the end of the taxable period. The taxable period is primarily a calendar month; however, the taxpayer may apply for calendar quarter depending particularly on his taxpayer's turnover for the previous calendar year.

As of 1 January 2016 the VAT payers have to submit a VAT-Control-Statement. It has to be submitted monthly (in some cases quarterly) and, similar to tax returns, electronically on an e-form. Transactions which shall be declared in the VAT-Control-Statement are domestic taxable supplies or receipt of advance payment, domestic acquisition of goods/services or providing of advance payment and some transactions with investment gold. If none of these transactions is carried out in the respective period, VAT-Control-Statement shall not be submitted. Nevertheless the obligation to submit a VAT return is not affected. Failure to submit the VAT-Control-Statement is subject to a fine imposed by the tax administrator. (For more details please see: <http://www.financnisprava.cz/en/taxes/VAT-Control-Statement>).

Other Taxes

Besides the corporate, personal and VAT tax, the following taxes are also in effect:

Consumer tax - This tax applies to mineral oils (including fuels and lubricants), spirits and distilled liquors, beer, wine and its intermediate products, tobacco products, heated tobacco products and raw tobacco 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). Tax levied on tobacco products is calculated as a combination of a fixed amount and a percentage of the selling price.

Energy Tax - The tax reform that came into effect on January 1, 2008 introduced a new type of indirect (environmental) taxes implementing the relevant EU directives in the area of energy taxes. These taxes are levied on supplies of electricity, natural gas and certain other gases, and solid fuels (hereinafter referred to collectively as “energy”). The payers of energy tax are either suppliers of energy in the Czech Republic selling energy to end-users or operators of distribution or transmission systems. The tax on electricity is levied at the rate of

CZK 28.30 per MWh. The tax on gas is levied at rates varying from CZK 0/MWh to CZK 264.80/MWh, depending on the type of gas, the purpose of its use and the date when the tax liability arises. The tax on solid fuels is levied at the rate of CZK 8.50/GJ.

Road tax - Road tax is imposed on entities that use vehicles. Road tax is payable on vehicles registered and operated for business purposes in the Czech Republic. The tax is calculated on an annual basis according to engine size for passenger cars or weight and number of axles for other commercial vehicles. The rates range from CZK 1,200 (on vehicles with engines up to 800 cm³) to CZK 50,400 (on heavy-duty vehicles over 36 tonnes). The tax rate may be reduced or increased depending on the date of initial registration of a vehicle. Freight vehicles weighing up to 12 tonnes with an electric or hybrid engine, or running on LPG (liquefied petroleum gas), CNG (compressed natural gas), or E85 are exempt from the road tax. The tax return must be filed by 31 January of the next year.

Real Estate Tax - Real estate tax 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 building(s) based on the situation as of 1 January of the relevant tax year, although in very specific cases the user or the lessee is the payer. All property owners must file tax returns with the relevant Tax Office by 31 January of the relevant tax period only for the first tax period (calendar year) and later only when the conditions relevant to tax assessment change. The tax is calculated taking into account the type, location and purpose of use of the real estate and various other factors. Generally, real estate taxes are calculated according to size of the property rather than based on its market value. Agricultural land is taxed based on its value. Consequently, real estate taxes in the Czech Republic are not as significant as they may be in other countries. The rate of land tax is CZK 0.2 per square meter, subject to building plots for which it differs from CZK 2 to CZK 10 per square meter depending on the location of the real estate (i.e. the rate of CZK 2 is further multiplied by coefficients determined by the municipalities). However, from January 1, 2012, paved areas (generally, land covered by a flat structure) used for business is subject to increased tax rate of CZK 1 per square meter (agriculture) or CZK 5 per square meter (other business activities). This applies to e.g. parking lots, platforms, certain roads, etc. Building and unit tax is calculated according to the registered built area.

Real Estate Acquisition Tax - Unless a tax exemption applies, real estate acquisition tax is charged at a uniform rate of 4% either of the sale price of a property or of 75 per cent of the comparative tax value (usual market price determined by a statutory expert or calculated based on guidelines, taking into account the location, size and type of real estate), whichever is higher. The tax is payable by the transferee (buyer). Certain transactions are exempt from real estate acquisition tax; namely mergers and demergers, transfers of property from the state and first transfers of newly constructed buildings, etc. The transfer tax return must be delivered to the Tax Administration Office and the payment of the transfer tax must be made

within three months of the registration of the transfer in the Land Register (the month in which the registration is completed is not included in this three-month period).

Under the Czech taxation system, **withholding tax** does not represent a special type of tax, but rather a manner of its collection. Actually it is an income tax levied on certain types of payments such as operating lease payments, copyright fees, dividends, royalties, profit shares and other related distributions. Withholding tax rate ranges from 5% to 35% depending on the type of income and residency of the recipient. The payer of withholding tax is the payer of the income which is subject to the withholding tax. Dividends, royalties or interest paid to a company seated within the EU can be exempt from withholding tax according to the implemented EU directives. Withholding tax rate may be reduced under a double taxation treaty concluded between the Czech Republic and the country where the recipient of the payment is a tax resident. As of April 1, 2019, the Czech Republic has concluded double-taxation treaties with more than 80 countries. The exemption under the treaty applies automatically and it is not subject to notification or approval of tax authorities.

The **Inheritance and Gift Taxes** are abolished as of January 1, 2014. The income from inheritance and/or donations is subject to income tax. Inheritance is broadly tax exempt. Gifts are exempt if donated between certain family members.

No **local taxes** have been introduced in the Czech Republic to date, however a municipality may introduce some local fees (e.g. fee for disposal of municipal waste, fee for special use of public spaces, spa, recreational stay or accommodation capacity fee, etc.).

The system of taxation described above may be subject to modifications warranted by relevant *Double Taxation Treaty*, if in effect. The Czech Republic has over 80 income tax treaties. The List of Treaties for Avoidance of Double Taxation can be found on the website of the Ministry of Finance: <http://www.financnisprava.cz/en/internation-tax-affairs/double-taxation>.

Other obligations

Electronic reporting system – As of December 1, 2016, the Electronic Reporting System (known under the Czech abbreviation “EET”) was introduced in the Czech Republic. Certain entities who are paid for their goods or services in cash, checks, bills of exchange or similar payment means (e.g. gift cards, meal vouchers etc.) are obliged to report the concerned payments in this EET system. EET imposes a duty on every relevant seller or service provider to buy electronic cash registers, connect to a cash register network and send information about each transaction realized by one of the above-mentioned means to the respective local Financial Administration Office.

The EET system was supposed to be introduced in the Czech Republic in 4 phases:

- As of December 1, 2016, for entities in the accommodation, restaurant and catering businesses;
- As of March 1, 2017, for entities in retail and wholesale businesses;
- As of March 1, 2018, for entities in other businesses/activities (e.g. transportation services, lawyers, doctors) except those mentioned below under phase 4;
- As of June 1, 2018, for entities in selected craft and manufacturing businesses (e.g. production of textile or clothing, woodworking, manufacturing of various products).

While phases 1 and 2 have been already introduced, the phases 3 and 4 were cancelled and their introduction will be postponed (the time frame is not known yet).

11. Labour Environment / Workforce

The Czech Republic has a large skilled and educated workforce, especially in technical sectors. According to the OECD, the Czech Republic is among the countries with the highest percentage of science and engineering students. Large majority of the workforce is able to communicate either in English or German.

Average gross monthly wages, while still lower than that in Western Europe, have grown in the recent years most from the entire CEE region. The average monthly salary (taking into account all occupations) reaches approx. EUR 1.300 in regions and up to EUR 1,600 in Prague in Q4 2018. The availability of lower paid workforce in the regions outside Prague is significant.

The Czech labour environment generally copies conditions and statutory protection offered in the remainder of the EU. The Czech Labour Code (Act No. 262/2006 Coll.) provides a statutory protection for employees and applies to all employment relationships involving Czech parties in the Czech Republic as well as to employment relationships performed in the Czech Republic where one of the parties is foreign, unless the parties have chosen another jurisdiction as governing law.

Employment contracts must be concluded in writing and must include minimum legal essentials (i.e. type of work, place of work and date of commencement of work). Employment contracts may be terminated by mutual agreement, on the date of expiry of a definite-period employment contract, by termination within a maximum of 3-month trial period, by a notice of termination or by immediate termination. The employer may terminate employment relationship by notice only upon grounds specified by the Labour Code, which are rather restricted. The employee may give a notice of termination to the employer for any reason whatsoever (or without stating a reason). The termination period for statutory-driven terminations is 2 months. In case of termination of the employment relationship for organizational reasons the employee shall receive severance payment amounting to up to 3 average monthly earnings depending on the length of an employment relationship (less than 1

year – 1 average earning; from 1 to 2 years – 2 multiple average earnings; more than 2 years – 3 average earnings). In case of termination of the employment relationship due to work related injury or sickness, or threat of work-related sickness the employee shall receive the severance payment equal to at least 12 multiples of the employee's average monthly earnings. An employer is not allowed to dismiss certain members (or former members) of a trade union body without the union's prior written consent as well as he is not allowed to dismiss employees during a protective period, such as during pregnancy, illness, caregiver leave, except if the business (or a part) is being shut down or relocated, or if there are grounds for immediate termination.

The maximum weekly working hours is 40 hours. In extraordinary cases an employer may require overtime work, however, only exceptionally and when there are serious operational reasons for it. When an employee is ordered to work overtime by his employer, such overtime may not be in excess of 8 hours in individual weeks and a total of 150 hours in the calendar year. Overtime work in excess of this limit may only be performed in exceptional cases and on the condition that the employee consents to it.

For any overtime work the employer must pay salary plus an allowance of 25% of average earnings as compensation, unless both parties agree that the employee will be provided with unpaid leave instead of such allowance. With an employee, it is possible to agree that compensation of overtime work of up to 150 hours per year is included in the agreed salary, with a managerial employee up to 416 hours per year.

An employee is entitled to at least 4 weeks of holiday per calendar year. Additionally, the Czech Republic currently has 13 statutory public holidays. Holiday time may be increased through a collective agreement, internal regulations or in an individual contract, while the rules on equal treatment must be respected.

Under the Czech Labour Code, the female employees are entitled to 28 weeks of maternity leave (37 weeks for multiple births) and the male employees are entitled to one week of paternal leave. Parental leave must be granted to female or male employees upon request. It can be granted at any time from the end of maternity leave (for mothers), or the date of birth (for fathers), since the child reaches the age of 3. There are also some special right for the employees who are parents or caregivers.

Trade unions are a common occurrence in the Czech Republic; employers must consult certain steps with regard to mass redundancies and restructuring of companies prior to their being effected with trade unions, as well as with local Labour Offices. Trade unions are easy to establish and they automatically represent all employees, regardless of membership. Collective agreement negotiated with trade unions and work and remuneration conditions contained therein apply to all, even non-unionised, employees of the company.

12. Consumer Protection

The legal regulation of consumer protection (i.e. a group of various laws, provisions and organizations designed to ensure that the consumers' rights are protected) in the Czech Republic is strongly affected by the EU legislation.

In the first place, a significant part of the consumer protection comprises obligations imposed by the Civil Code to entrepreneurs when contracting with consumers or acting otherwise towards consumers. It covers rules governing such as entering into standard form contracts, duty to inform the consumer or banned contractual covenants as well as liability for defects, warranty claims and handling complaints.

Further, a vendor of goods or provider of services has a number of responsibilities towards the consumer under the Act on Consumer Protection (Act No. 634/1992 Coll., as amended) Among the most important there is the responsibility to inform the consumer about characteristics of the product, the nature of services provided, prices, risks, etc. Also, the Act on Consumer Protection bans the entrepreneurs from using unfair commercial practices (e.g. misleading or aggressive commercial practices). Since the end of 2015 the entrepreneurs in administrative proceedings bear the burden of proof that their commercial practices are not unfair.

Pursuant to the legislation governing alternative dispute resolution of consumer disputes, entrepreneurs are obliged to duly inform consumers about the possibility of ADR as well as of the ADR body competent for the particular type of goods or provided service. Entrepreneur running a website shall provide the information on the website and if a contract concluded between the entrepreneur and the consumer refers to business terms and conditions, the information shall be provided also therein. Similarly, entrepreneurs concluding contracts online are required to provide a link to the website platform for online dispute resolution (ODR).

Last but not least, the Act on Consumer Protection enables the entrepreneurs, regardless of the obligation of secrecy and in most cases without the consumer's consent, to exchange information (in scope defined by law) relating to solvency, payment discipline and credibility of consumers which are obliged towards them either from loan or from long-term or repeated performance. The information exchange shall happen by means of an information database about the solvency and credibility of consumers. The database may be operated by a legal person being not an entrepreneur, based on a written contract entered into with entrepreneurs among which have to be at least 10 providers of payment services (e.g. banks and vendors of consumer loans). Non-anonymous data concerning a consumer's commitment may be kept in the database until 3 years after cessation of the commitment.

13. Personal Data Protection

As of May 25, 2018, the entities processing personal data (for example data of employees, contractors or business contact data) have to comply with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

The entities have to ensure that processing and use of personal data complies with data protection principles, which include obligations of lawfulness, fairness and transparency, principle of accuracy, accountability, minimisation, security, integrity and confidentiality, purpose and storage limitation. The General Data Protection Regulation also restricts the transfer of data out of the EEA unless prescribed compliance measures are taken.

The entities are obliged to determine the legal basis for processing of personal data, they have to process personal data only in accordance with the designated purpose of their processing and only for period of time which is necessary to fulfil such purpose. They are also obliged to provide the data subjects with all required information regarding processing of their data as stated in the General Data Protection Regulation.

Breach of the General Data Protection Regulation may be subject to administrative sanctions and under some circumstances an unauthorised disposal of personal data constitutes a criminal offence under the Czech Criminal Code.

14. Real Estate

The Czech Republic has a developed real estate market and real estate development sector. Law covering leases, rents, mortgages, encumbrances, title registration and title restrictions is stable and well developed. The Czech land register system – local known as the Cadastre of immovable real estate property – is fully functional and reliable. The Cadastral Register is publicly available.

Since May 1, 2011, there have been no legal restrictions preventing foreigners from acquiring real estate in the Czech Republic. Any purchase or transfer of real estate must be registered in the Cadastral Register. However, such registration is not a sufficient proof of ownership and may be challenged in court due to various reasons. Therefore due diligence on the ownership title is highly recommended. Before purchasing real estate, the investor should review all relevant documents related to the property in order to verify the legal status of the ownership title. Once the ownership title of the buyer is registered in the Cadastral Register, the buyer becomes the legal owner of the transferred real estate with effect as of the date the request for registration was filed.

The new Civil Code (effective as of 1 January 2014) introduced a concept of “*superficies solo cedit*”, which means that a structure always belongs to the owner of the land on which it is built. However, in some circumstances, the separate status of structure and land still exists, for example if the owner of a piece of land was not identical to the owner of a structure located on such piece of land as at 31 December 2013, then the legal ownership of such structure and such land continues to be separate until certain circumstances arise. Beside this, certain types of structures are not part of the land on which or in which they are situated (e.g. electricity cables, sewage pipes or certain types of roads). If a structure and the land on which it stands remain separate, their owners have a pre-emptive right in respect of each other (e.g. the owner of the structure must offer the structure to the owner of the land before selling it to any third person).

15. Register of Contracts

Besides other legal rules governing registration, reporting and transparency, stemming mainly from the legislation of the EU, the entrepreneurs, when concluding contracts with their prospective business partners, should be aware that private-law contracts concluded with the Czech Republic or other persons liable under the Act No. 340/2015 Coll., on the Register of Contracts (e.g. a regional or local authority, a state fund, a public research organisation or university or a company in which the state or a regional or local authority holds a majority stake, etc.) as of July 1, 2016 shall be published (regardless of its governing law) by these liable persons in the Register of Contracts.

Some contracts are exempt from this duty, e.g. contracts which value is less than CZK 50,000 (approx. EUR 1,900) excl. VAT, contracts to be performed mainly outside the Czech Republic, contracts relating to copyright work or contracts concluded with a joint stock company whose securities are admitted to trading on a regulated market and in which the state or regional or local authorities holds a majority stake, etc.

As a consequence of the liable person’s failure to publish the contract in the Register of Contracts, the contract will not come into effect (since the contract may come into effect no earlier than on the date of its publication). Moreover if the contract is not published within 3 months of the date of its conclusion it shall be void from the beginning. The entrepreneurs should therefore pay attention to the legal form and ownership structure of the person with whom they are going to conclude a contract and consider whether the person has to publish the contract in the Register of Contracts for its effectiveness.

16. Register of the Beneficial Owners

Since January 1, 2019 each business corporation or another legal entity registered in the Czech Commercial Register has to register information on its beneficial owner(s) into a so-called register of data of the beneficial owners, which is administered by the registry court and related to the measures of anti-money-laundering legislation (Act No. 253/2008 Coll., the so-called “AML Act”). Entities registered in other public registers (e.g. associations, foundations, trusts) must file the information by January 1, 2021.

Beneficial owner is defined as a natural person which has the actual or legal possibility to exercise directly or indirectly significant influence over the legal entity. *Subject to satisfaction of the conditions stated in the preceding sentence, the beneficial owner of a business corporation is deemed a natural person who:*

1. *either on its own or with other persons acting in accord, disposes with more than 25 % of the voting rights in the business corporation or holds a share in the registered capital of the business corporation exceeding 25 %,*
2. *either on its own or with other persons acting in accord, controls the person referred to in subsection 1 above,*
3. *shall be the recipient of at least 25 % of the business corporation profits, or*
4. *is the member of a statutory body, a representative of a legal entity in such body or is in a position similar to that of a member of a statutory body, in the event there is no beneficial owner or the beneficial owner cannot be determined pursuant to the provisions of subsections 1 through 3 above.”*

This Beneficial Owners’ Register is not public. Apart from the entity itself, the records of beneficial owners may only be accessed by authorized persons, including those obliged to verify the identity of their clients under the AML Act (e.g. banks), Contracting Authorities and some state administration bodies such as courts, tax offices, Police of the Czech Republic, Czech National Bank, etc. In addition, some information will also be accessible to a person who proves their legal interest in relation to the prevention of specified criminal offences.

The following data are recorded in the beneficial owners’ register: the beneficial owner’s name, temporary residence address, and if different also permanent residence address, date of birth, birth number, if applicable, citizenship, and information on the fact establishing the beneficial owner’s position (e.g. share in voting rights in a business company).

17. M&A / Competition

As elsewhere in Europe, mergers and acquisition in private sector are subject to review by the local antimonopoly office – in case of the Czech Republic this is the Office for the Protection of Competition located in Brno, which is charged with ensuring that market behaviour is in compliance with competition rules and benefits the consumers. The Office ensures the competitors to behave in compliance with the principles of competition law, and interferes with practices distorting competition, e.g. cartel agreements, abuse of dominant position, etc. At the same time, the Office offers businesses the possibility to remedy their illegal conduct

which has not resulted in a significant impact on the market so far. The Office also supervises procedures of awarding public procurement and concessions, thus ensuring better transparency in public spending.

Czech competition law regulates restrictive agreements and practices, mergers and abuses of dominant market position. As a general rule, agreements, decisions and practices that lead or could lead to violation of competition rules are prohibited and are null and void.

Merger Control

Under the Czech Competition Act No. 143/2001 Coll., as amended, permission of the Office for the Protection of Competition is mandatory in case(s) where the transaction involves (i) a merger, (ii) an acquisition by one or more undertakings of direct or indirect control of another undertaking, (iii) an acquisition of all or part of the business assets of one undertaking concerned by another, (iv) a creation of a concentrative full-function joint venture and

- the combined aggregate net turnover on the Czech market of all undertakings concerned exceeds CZK 1,500 million (approximately EUR 57.7 million) and at least two of the undertakings concerned each have net turnover on the Czech market exceeding CZK 250 million (approximately EUR 9.61 million); or
- at least one of the undertakings concerned has net turnover on the Czech market exceeding CZK 1,500 million (approximately EUR 57.7 million) and at least one other undertaking concerned has worldwide net turnover exceeding CZK 1,500 million (approximately EUR 57.7 million).

Under the Competition Act the aggregate (the combined) net turnover includes the net turnovers achieved by:

- (a) all the undertakings concerned,
- (b) persons, which will be controlling undertakings concerned after implementation of the given concentration and persons, which are controlled by the undertakings concerned,
- (c) persons controlled by the person, which will control the undertakings concerned after implementation of the given concentration, and
- (d) persons controlled jointly by two or more persons referred to in (a) to (c) above.

Public (State) Aid

With the admission of the Czech Republic to the European Union, that jurisdiction passed onto the European Commission. The Office continues to function as a monitoring, coordinating and consulting body that advises governmental agencies on the handling of individual cases.

Since December 1, 2012 it is expressly forbidden for public administration authorities to distort competition by favouring a certain undertaking with their support or in any other matter. The Office supervises whether or not public administration authorities are distorting competition.

Abuse of Significant Market Power

According to Act No. 395/2009 Coll., retail chains with a turnover above CZK 5,000 million (approximately EUR 192.3 million) are prohibited from abusing significant market power over their suppliers in the food sector. It does not cover cartel agreements or the abuse of a dominant position. The Office is responsible for supervising compliance with the legislation. Written form and contract essentials are prescribed by law for supply contracts concluded by a buyer with significant market power.

Abuse of Dominant Market Position

In order to protect the competition, abuse of a dominant position in the relevant market to the detriment of other competitors or consumers is prohibited; in particular, such abuse could be for example direct or indirect enforcement of unfair conditions in the agreements with other participants in the market, applying different conditions to identical or equivalent transactions towards particular trading parties, or consistently offering or selling goods for unfairly low prices, which results or may result in a distortion of competition.

The basic condition of the merits of the abuse is to prove that the dominant position of an undertaking does exist. According to a legal definition of a dominant position, an undertaking or more undertakings together (joint dominance) have a dominant position in the relevant market, if their market power enables them to behave to a certain degree independently of other undertakings or consumers. It is deemed that an undertaking or undertakings with joint dominance do not have a dominant position under the condition that their market share is below 40 % in the period under examination, unless proved otherwise (e.g. according to their economic and financial strength, size of the market shares of their closest competitors, market structure, legal or other impediments preventing other competitors from entering the market).

Also in case a certain undertaking or more undertakings have a dominant position in the relevant market, they have the right to advocate their position in the market, i.e. to behave in a competitive manner in the market, provided a condition is fulfilled which states that such behaviour is evidently not inadequate with regard to the specific circumstances. In the case of justifiable reasons for the action of a dominant, it is not possible to regard its behaviour, which would otherwise fulfil signs of abuse, as prohibited by law.

Sanctions, Leniency Programme

The Office for the Protection of Competition may impose a fine and/or a prohibition on the performance of public or concession contracts as sanctions for certain administrative offences. Fines can be imposed on individuals as undertakings, legal persons, self-employed individuals or public administration authorities for breaching their obligations under the Competition Act. The maximum financial penalty on companies for an administrative offence can be as high as CZK 10,000,000 (approx. EUR 384,615), or 10% of the net turnover for the last accounting period. The Office will waive from imposing of the fine if certain conditions are met, e. g. the Leniency Programme may be used. The Leniency Programme is an effective tool for fighting cartels. It gives to a cartel participant the opportunity to inform the Office about the existence of a cartel agreement. In case the participant provides the Office with new information enabling the Office to start administrative proceedings and to prove a cartel, it has a good chance of going unpunished.

18. Visas & Permits

Travel to and business in the Czech Republic presents almost no difficulties for EU member states' citizens. Since December 21, 2007, the Czech Republic is a member of the Schengen Agreement, which ensures cross-border movement of visitors without the need for additional visas or authorisation, once initial entry has been made. Employees from these countries do not require work permits, provided they have a travel document or an identity card. The EU principles of free movement apply also to their family members. Citizens of countries outside of EU are required to apply for work permits, such as so called "**Employee Cards**" or "**Blue Cards**" or "**Intra-Company Employee Transfer Cards**", or visas to enter and stay in the Czech Republic.

A Blue Card is a residence and working permit and enables the holder to reside in the territory of the Czech Republic on a long-term basis for the purpose of employment in a position requiring a high level of professional skill.

An Employee Card is a new type of long-term residence permit for the purpose of employment and replaces the visa for a stay of over 90 days for the purpose of employment as well as the long-term residence permit for the purpose of employment and a Green Card, which is no longer issued. An Employee Card is most often issued for the duration of the employer-employee relationship but not for more than 2 years, with an option to repeatedly extend its validity.

An Intra-Company Employee Transfer Card is a new type of long-term residence permit as well. An Intra-Company Employee Transfer Card is an authorisation where the purpose of residence of the foreign national is to perform work in the position of manager, specialist or employed intern to which the foreign national has been transferred. The Intra-Company Employee Transfer Card is issued for the duration of transfer to the territory of the Czech Republic, but only to a maximum of 3 years for a manager and specialist and for 1 year for an

employed intern. For purposes of an Intra-Company Employee Transfer Card an intra-company transfer has the meaning of the temporary transfer of an employee of a multinational company from a functioning section of a multinational company in a country that is not a member state of the European Union to a functioning section of the company located in the Czech Republic.

For citizens outside the EU the following visas are required:

Schengen visa for transit or stay in the Schengen area (short-term visa)

1. Airport transit visa (visa "A") allows its holder passing through the transit areas of the airport during a stop-over or transfer.

2. Short-term visa for stay up to 90 days (visa "C"), e.g. for the purpose of

- tourism, health & spa tourism, medical treatment
- business journey, conference, cultural or sport event
- employment or other profit-generating activity
- study, internship or scientific research, training
- a visit (based on an official invitation verified by an Alien Police Inspectorate)
- official/political purpose
- other

A short-term (Schengen) visa is issued by a diplomatic mission of the Czech Republic or of another Schengen state and entitles its holder to stay in the territory of the Czech Republic/Schengen area for the period indicated in the visa. Usually uniform visas are issued, allowing the holder to circulate in the entire Schengen area (whereas visas with limited territorial validity are issued exceptionally).

According to the so-called "90/180 rule," an alien can stay in the Czech Republic/Schengen area for a maximum of 90 days within any period of 180 days immediately preceding each day of stay. After a 90 days long stay, it is necessary to travel out of the Czech Republic/Schengen area. This rule does not pertain to aliens who: (1) are citizens of those countries with which the Czech Republic has concluded a bilateral visa free agreement before its entry into the EU (i.e. Argentina, Chile, Costa Rica, Honduras, Israel, Malaysia, Panama, Republic of Korea, Singapore, Uruguay) – these aliens however need to travel out of the Schengen area after a 90 days long stay at least for one day; (2) stayed in the Czech Republic/Schengen area based on a Schengen visa and their subsequent stay will be based on a Czech national visa (these visas are issued only in exceptional cases); (3) will stay in the Czech Republic based on a long-term visa or long-term residency permit.

In addition to the above, special short-term visas for seasonal work are issued by a diplomatic mission of the Czech Republic. Visas for seasonal work may be issued with validity for the entire Schengen Area or with limited territorial validity for selected member states. However, such visas do not constitute the right to work on the territory of the Czech Republic. That is why when applying for short-term visa for seasonal work a foreigner is among others obliged to attach already issued employment permit to his application for visa or to refer to reference number of his application for employment permit already submitted.

Long-term visa - issued as national visa with Schengen visa properties (i.e. grants a possibility of stay in the Schengen area for a maximum of 90 days within any 180 days)

The long-term visa (visa “D”) is a national visa for a stay over 90 days.

1. Visa for a stay over 90 days is issued to an alien for a purpose requiring a stay of more than 3 months, e.g. for the purpose of

- entrepreneurship, investment and creating new jobs;
- study, internship, pedagogic activity;
- scientific research;
- family reunification (till long-term residence permit is granted);
- sport, culture;
- medical treatment;
- official/political purpose;
- seasonal work;
- a visit (invitation); or
- other (except employment, since that is subject to Employee Cards and Blue Cards)

and is granted for the validity period stipulated, but for not more than 1 year.

2. Furthermore, a visa for a stay over 90 days is issued to an alien for the purpose of collecting a respective residence permit (such as Blue Card, Employee Card, long-term residence permit for different purposes such as family reunification, study or scientific research), or for the purpose of submission of the application for a long-term residence permit granted by the Ministry of Foreign Affairs. The visa for a stay over 90 days referred to in this paragraph is granted for 6 months and for the period of stay in the territory of the Czech Republic not exceeding 60 days or 30 working days in case of a stay for the purpose of submission of the application for a long-term residence permit granted by the Ministry of Foreign Affairs.

A visa for a stay over 90 days – type D allows its holder during its validity a free movement around all states of the Schengen Area, including the Czech Republic. The entire period spent on the territory of Schengen states other than the territory of the permit issuing state shall not exceed 90 days within any period of 180 days.

An application for a visa for a stay over 90 days (category D) may be filed solely at a diplomatic mission of the Czech Republic abroad. The diplomatic mission does not decide on the issue or refusal to issue the visa for a stay over 90 days. The visa for a stay over 90 days is issued by the Ministry of Interior of the Czech Republic, based upon the application of an alien who wishes to stay in the territory of the Czech Republic for a purpose requiring the stay in the territory of the Czech Republic for a period longer than 3 months. The visa for a stay over 90 days is affixed to the alien's travel document by the diplomatic mission based on the instructions of the Ministry of Interior of the Czech Republic.

An applicant for a long-term visa is obliged to undergo an interview if the diplomatic mission calls him/her to it. In the case an alien is applying for a long-term visa for the purpose of conducting business, he/she must always attend the interview.

An application for a visa for a stay over 90 days shall be processed by the Ministry of Interior of the Czech Republic within 90 days, in exceptionally complicated cases within 120 days of the submission date of the application. An application for a visa for a stay over 90 days for the purpose of study or a pedagogic activity or for the purpose of scientific research or seasonal work shall be processed within 60 days of the submission date of the application.

Particulars of a visa application may not be older than 180 days, except for the alien's travel document, civil register documents and photograph corresponding to his actual appearance, unless stipulated otherwise. All particulars, except for the travel document, must be in the Czech language (either in the Czech language or in a foreign language accompanied with a certified translation into the Czech language).

For the purposes of employment or entrepreneurial activities a foreigner will be required to seek a work permit or a trade license operate as a self-employed entrepreneur. An application for residence permit for the purpose of conducting business shall be submitted also by an alien willing to stay in the territory of the Czech Republic as a statutory body or a member of the statutory body of a business corporation. These permits for non-EU residents are tied to the issue of long-term visas, and once the visa has been granted the relevant applications and processes do not represent a major obstacle.

DISCLAIMER

“Doing Business in the Czech Republic” is not intended to be comprehensive, nor is intended to be a substitute for legal advice. Professional advice should be sought before applying the information to particular situations.

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