



Doing Business in the Czech Republic

27.05.2016

/ Introduction & Legal System

The Czech Republic is a Central European country with more than 10.5 million inhabitants occupying a strategic position in the heart of Europe. Its convenient location, dynamic economic development and high level of human capital make the Czech Republic a natural target for international investors in many areas of business. Large volumes of foreign investment have been directed at the automotive, engineering, chemical and pharmaceutical industries and has been a key part of the country's economic transformation. An open investment climate has always been considered a key element of the Czech Republic's economy, which has made it one of the most successful Central and Eastern European (**CEE**) countries in terms of attracting foreign investment.

The Czech legal system is based on civil law and arises out of the German and Austrian legal tradition, which means that the law is created by Parliament and the judicial precedent is not binding. Civil, commercial, criminal and labour law are codified. A number of minor acts supplement the codes in more specialised areas such as insolvency, public procurement, banking and construction law.

Fundamental changes in civil and commercial law took place effective 1 January 2014, when the new Civil Code and Business Corporations Act came into force, replacing the previous Civil Code and Commercial Code. Both of these represent a significant re-codification of the current legislation, and require a lot of attention not only from existing businesses, but also prospective businesses. The free will of individuals is the underlying fundamental principle of the new legislation. The business sector will, undoubtedly, appreciate the wide scope of contractual freedom which allows them to negotiate agreements and make arrangements that could have been deemed invalid in the past.

The Czech Republic is a fully developed parliamentary democracy. Legislative power is bestowed on the parliament, the government serves as the main executive body, and justice is executed by the independent judiciary. The Czech Republic joined the European Union in 2004 and, since then, European law has played an important role in the legislative process. The Czech Republic is a member of the Organisation for Economic Co-operation and Development (OECD) and a signatory of a number of international treaties and conventions, including bilateral investment treaties and treaties for the avoidance of double taxation.

Government and policy approach

The Czech Republic maintains a consistent social and economic policy and is often referred to as one of the most successful new EU economies. Attracting and supporting foreign investment has been a national priority since the economic transformation in the early 1990s and is still considered one of the driving forces of the national economy. However, it is not only its steady legal and political environment that has made the Czech Republic a business-friendly country and an attractive and popular destination for a number of foreign investors.

One of the main reasons for the country's success in attracting foreign investment is its workforce. The Czech labour force is highly skilled (especially in the technical and engineering sectors) and relatively low in cost. Its qualifications and efficiency are comparable to those of its western neighbours, at only a fraction of the cost.

The country is easily accessible from all European capital cities and boasts one of the best developed infrastructure and domestic supply bases in the CEE region.

The Czech taxation system favours businesses, as the corporate tax rate is fairly low (19%). The profits of default investment funds are subject to a lower tax rate of 5%, but other investment funds have a tax rate of 19%. Value-added tax rates are 10% (applying to products like baby food, medicines, books), 15% (applying to products such as food and special healthcare products) and 21% (which includes most goods and services). A system of tax relief is available for large-scale investors, together with a number of other governmental investment incentives.

The Czech Republic has a highly developed industrial base, which has long been the main target of foreign investment. The service sector has also become much more developed over the past 20 years, particularly in the main urban centres and their surrounding areas. Investment is still abundant in the strong sectors of the Czech economy, such as the automotive or chemical industries, although the focus is slowly shifting from investments in production and manufacturing to investments in science and research and development (**R&D**). This trend is expected to strengthen in the coming years as the country is in the process of a transformation from an industrial power into a high-value-added knowledge economy. This transition is already visible, and a growing number of international businesses are selecting the Czech Republic as a base for their R&D operations. Extensive research facilities such as science and technology parks and "business incubators" are being developed. The country's effort to re-brand itself as an R&D centre and hub for knowledge is being aided by extensive assistance from EU structural funds and national governmental incentives.

/ Foreign Investment Policy

, The Czech Republic regularly ranks among the top countries in the European Attractiveness Survey. Investors in manufacturing can take advantage of a system of incentives, such as tax relief and employment subsidies, granted by the Czech government. Businesses set up in the Czech Republic can also obtain support from EU structural funds under several Operational Programmes in the R&D sector.

Foreign investment plays a key role in the Czech economy. More than 173,000 Czech firms across all business sectors are supported by foreign capital. According to the Czech National Bank, the total amount of foreign direct investment reached CZK 2.77 trillion until the end of 2015 (approximately EUR 100.1 billion). Most of the biggest investors in the Czech Republic are firms residing inside the EU, mainly the Netherlands, Germany and Austria. In general, firms from the EU constitute 86.7 % of international investment. Capital from the United States and Korea also plays a significant role in the national economy.

Foreign capital is mostly concentrated in the automotive industry, software and information and communication technology (**ICT**) services, business support services, the aerospace industry, electrical engineering and advanced renewable energy. Investment into the advanced pharmaceutical and chemical industries is on the increase.

Most of the investments were allocated to manufacturing industries (33.4 %), followed by financial and insurance activities (25.4 %) and wholesale and retail trade and repair of motor vehicles (10.7 %). This was largely due to the traditionally dominant vehicle-manufacturing sector. In 2015, the national agency CzechInvest mediated 78 foreign investment projects with a total value of CZK 37 billion. Twenty-two of these investment projects (with an aggregate value of CZK 9.7 billion) came from the USA and 21 (with an aggregate value of CZK 9.2 billion) came from Germany. Other active investors were Taiwan (two projects with an aggregate value of CZK 4.5 billion), Korea (four projects with an aggregate value of CZK 3.1 billion) and Switzerland (six projects with an aggregate value of CZK 3.0 billion).

The most popular current investment opportunities are to be found in the ICT sector, especially software development and electrical engineering. Electronic engineering has been linked to Czech industry since the beginning of the 20th century. The Czech Republic has a very good domestic supply base in electronic products and is suited to more advanced projects in electronic engineering and software development. The Czech labour force includes a very high percentage of highly qualified electrical engineers and software developers, while labour costs are still well below the EU average. Moreover, foreign investors can benefit from the country's central strategic position in Europe, with direct access to the EU market via its well-developed transport and telecommunications infrastructure.

The main foreign trade and investment agency of the Czech Republic is Czechinvest (www.czechinvest.cz). Czechinvest has advised foreign companies intending to extend their

business activities to the Czech Republic since 1992 and now operates from several locations around the world.

/ Types of Business Vehicles

In the Czech Republic, business entities are governed primarily by Act. No. 90/2012 Coll., on Business Corporations (**Business Corporations Act**), which came into force on 1 January 2014. Some general aspects of legal entities can be found in the new Civil Code. Companies established before 1 January 2014 are, under certain conditions, governed by Act No. 513/1991 Coll., the Commercial Code, as amended. In addition, the legal regulation of certain specific business entities, such as banks and insurance companies, is contained in special laws (Act No. 21/1992 Coll., on Banks, Act No. 277/2009 Coll., on Insurance). The Business Corporations Act is the second major part of the recodification of private law in the Czech Republic and closely follows the new Civil Code.

Forms of business vehicle

In most cases, the vehicles preferred by investors for facilitating their business in the Czech Republic are either a limited liability company ("*společnost s ručením omezeným*" (**s.r.o.**)), or a joint stock company ("*akciová společnost*" (**a.s.**)).

Both of these vehicles grant its shareholders a legal separation of their assets and the assets of the company.

In reality, Czech law generally does not allow for much flexibility in terms of arrangements made by the shareholders in the articles of association of a company. This applies both to limited liability companies and joint stock companies.

Certain provisions of shareholders' agreements, which some foreign investors consider as market standard, may also not be enforceable in the Czech Republic.

If individual provisions of the founding deeds of both of the vehicles of existing companies are in conflict with the mandatory provisions of the new Civil Code, then such conflicting provisions will automatically be repealed beginning with the day on which the new Civil Code came into effect (01.01.2014). The corporations must adjust these conflicting provisions to the new Civil Code regulations and file their amended founding deeds with the Collection of Deeds at the competent register court within six months from the effective date of the new Civil Code. Otherwise, these companies will be under the threat of compulsory winding-up by the court, including subsequent liquidation.

Limited liability company (s.r.o.)

The most frequently used vehicle is the limited liability company - s.r.o. Compared to the joint stock company, the process of establishing an s.r.o. is easier and there are fewer administrative requirements in relation to the management/running of the company. In addition, the minimum capital requirement is lower (CZK 1, in a one-member s.r.o.) and the s.r.o.'s members (shareholders) enjoy limited liability for the company's obligations.

Foundation Process

A limited liability company can be founded either by one or more individuals or by another company (legal person). The number of members of an s.r.o. is not limited. The new Business Corporations Act revokes the prohibition on chaining an s.r.o., thus allowing the s.r.o. to be established by an s.r.o. whose sole founder or member is an s.r.o.

There must be a record made by a notary on the establishment of the company (notarial deed).

The registration of a company or partnership in the Commercial Register is carried out by the competent courts. If all the statutory requirements are met, the court will register a company or partnership in the Commercial Register. The company or partnership is then fully incorporated as of the date of its registration in the Commercial Register. The same applies to the joint stock company.

There is a registration fee of CZK 6,000 (approximately EUR 220), which must be paid to the registration court. Based on the recently passed amendment to Act No. 549/1991 Coll., on judicial fees, if the registration is processed by a notary, no registration fee is required.

The process of establishment of a limited liability company takes approximately two weeks.

Share capital

The minimal registered capital requirement for an s.r.o. is CZK 1 (provided that the s.r.o. has only one member - the Business Corporations Act requires each member to provide a contribution of at least CZK 1). A higher contribution may be determined and recorded in the foundation deed or the articles of association.

The members' capital contributions to the registered capital of an s.r.o. may be paid in cash (monetary) or in-kind (non-monetary). The value of a contribution in-kind to the s.r.o. must be determined by an independent expert. The managing director or the founders (when establishing a company) select an expert from a list of experts (maintained under a special legal regulation).

The total amount of all contributions must equal the value of the company's registered capital. The contributions must be paid up within the period set forth in the s.r.o.'s foundation deed or the articles of association; within five years from the incorporation (registration) of the company; or from the takeover of an obligation to pay up the contribution(s).

Corporate Bodies

A limited liability company has:

- a general meeting (i.e. meeting of the shareholders), which is the main decision-making body of the company when it comes to general matters/matters of substantial importance and
- a statutory body (one or more managing director(s) who are empowered to act on behalf of the company in all matters), who facilitate day-to-day business of the company and represent the company in relation to third parties

A supervisory board is optional. Its task is to perform controlling functions.

Directors'/Shareholders' liability

Each shareholder of an s.r.o. is jointly and severally liable for the obligations of the s.r.o. up to the aggregate amount of shareholders' unpaid capital contributions, as registered in the Commercial Register. Once all capital contributions are paid up and registered in the Commercial Register, the members' liability for the company's obligations extinguish.

Joint Stock Company (a.s.)

Foundation Process

A joint stock company can be established by either one founder or several founders (legal or natural persons). The company is established upon the adoption of the articles of association (which have to meet all the statutory requirements) by all its founders in the form of a notarial deed. The founders must subscribe the total value of the company's registered capital.

There is a registration fee of CZK 12,000 (approximately EUR 445) that must be paid to the registration court.

The process of establishment of a joint stock company takes approximately six weeks.

Share capital

There is a minimum share capital requirement of CZK 2 million (approximately EUR 75,000). The registered capital of the a.s. is divided into shares, the aggregate nominal value of which corresponds with the total value of the registered capital. The company may also issue only no-par value shares (in Czech: "*kusové akcie*"). The shares are issued in the amount of the share capital and distributed among the shareholders. The shares can be either in the form of a certificate, or in book-entry form. Further, they can be registered, or in the bearer form.

The law also recognises priority shares, which award the owners the priority rights for dividend payments.

Non-monetary contributions to the share capital are allowed. The market value of a non-monetary contribution needs to be assessed by an independent expert.

Corporate Bodies

The founders can decide whether to grant the company a monistic (administrative board and statutory director) or dualistic (board of directors and supervisory board) corporate structure.

Directors'/Shareholders' liability

A Czech joint-stock company is fully responsible for its obligations towards third parties, however the shareholders are not personally liable for the company's obligations.

/ Employment

Employee relations

Czech labour and employment relations are governed by laws, collective bargaining agreements and individual employment agreements. With the world-wide recession in recent years, and the introduction of austerity measures and other cuts, the role and power of the trade unions (which have a strong history in such fields as the construction industry, the automobile industry and health services) have increased. However, country-wide and/or long strikes are rare in the Czech Republic.

Social security has a long tradition in the Czech Republic. Social security and health insurance contributions are paid from the remuneration of each employee. All employees benefit from social security and health insurance in cases where the employee is not able to work because of a reason determined by the law (such as illness, loss of a job, etc.). Recently, however, there has been a move to pass some of the resulting costs on to employers. Employers are obliged to provide an employee with sickness benefits for the first two weeks of an illness, with the exception of the first three working days. Only thereafter are the benefits provided by the Social Security Agency. Most parents take advantage of the two to four year parental leave option (for a single child, one parent is allowed to care for the child, but the parents may switch several times).

Employees benefit from the tendency of the judiciary to place most of the burden of proof on employers. As a result, employees often succeed in wrongful termination actions. Invalidity of termination of an employment relationship by notice, immediate termination, termination during a trial period or termination by agreement must be claimed by both the employer and the employee in the courts within two months of the date on which the employment relationship was to end through such termination. This provision has not been changed for the past 25 years. However, since 1 January 2014, if the parties enter into settlement negotiations (entry into settlement negotiations can be informal, even an exchange of letters which demonstrates that the parties have discussed a possible settlement can be considered as an entry into settlement negotiations), the two months' term is interrupted and does not continue as long as the parties are discussing a settlement. The term then starts to run once the negotiations are over, but does not end sooner than six months after the end of the settlement negotiations.

The labour law field is primarily regulated by the Labour Code (Act No. 262/2006 Coll., *zákoník práce*) the Collective Bargaining Act (Act No. 2/1991 Coll., *zákon o kolektivním vyjednávání*) and the Employment Act (Act No. 435/2004 Coll., *zákon o zaměstnanosti*). The Labour Code is closely linked to the act on further requirements for health and safety at work (Act No. 309/2006 Coll.).

An employment contract must be executed in writing. However, a failure to do so does not result in invalidity.

Employment contracts can be of an indefinite duration or limited in term. Consecutive limited terms between the same parties can be agreed, in principle, for a total of three years and may be extended twice in succession for the same period of time, to a total maximum term of nine years. The same restriction applies to any other fixed-term employment relationship established by the same parties within a three-year period.

The maximum number of working hours permitted by law is 40 hours per week. In respect of jobs in two shifts or three shifts, the working hours are reduced to 38.75 hours per week or 37.5 hours per week, respectively. The number of working hours may be reduced by agreement. If the number of working hours exceeds the statutory maximum, employees are entitled to a bonus for overtime work, in addition to their usual wage for the work performed.

According to current legislation, dependent work is to be performed above all in an employment relationship. Dependent work means personal performance of work by an employee for his employer within the relationship of the employer's superiority and his employee's subordination, in the employer's name and according to the employer's instructions. If a relationship between an employer and employee has the aspects mentioned above, the work performed has the features of dependent work and, as such, may only be performed in an employment relationship (i.e. it is not possible to perform dependent work on the basis of a mandate agreement or other contracts stipulated in any laws other than the Labour Code). A potential breach of this rule could entail high financial sanctions for the company.

The following matters have to be set out in the written employment contract:

- the nature of the work to be performed
- the place of work and
- the date on which the employment commences

As a rule an employment contract will also contain the following provisions:

- annual leave provisions (the legal minimum is four calendar weeks)
- the period of notice of termination by the employer and by the employee
- the manner of remuneration, its amount and due date and
- weekly working hours

In addition, a probationary period of up to a maximum of three months may be agreed (but only in writing and before the employment commences). A longer probationary period may be agreed upon with managerial staff, however, this may not exceed six months.

Employment contracts are entered into with employees and executive staff members. There is no separate type of managerial contract, however, employment contracts for managerial staff may include some specific provisions. For example, it may be stipulated in the contract that a manager may be discharged from his/her position (provided it is also agreed that they may resign from their position). It is also usual to enter into a non-competition clause or a clause of enhanced severance payment in such contracts with managerial staff.

Apart from employment pursuant to an employment contract, it is also possible to enter into an agreement on the performance of work or (into) an agreement on work activity for work which is of a limited scope, or for irregular, occasional or one-off work. The agreement on the performance of work differs from an employment contract primarily by the limited scope of work which may not exceed 300 hours in one calendar year. The scope of work under the agreement on the work activity may not exceed, on average, half of the set weekly working hours (that means, usually, 20 hours a week).

Collective employment relations

The most powerful employee representatives are the unions (*odborny*). They can be active in businesses with any number of employees, although they tend to operate within medium to large enterprises, representing from a few dozen to hundreds of employees. The unions are the only employee representatives that have legal personality and the right to enter into collective agreements on behalf of employees.

The rights of unions include the right to demand information, the right of discussion with the employer regarding certain issues (such as the economic situation of the employer, workload and changes in the organisation of work) and the right of co-determination in certain matters. In addition, the employer requires the consent of the unions for certain actions (for instance, the giving of notice of termination to an employee who is a member of the union).

Another type of employee representation is a works council. In comparison with unions, the rights of a works council are significantly restricted. A works council has no right of co-determination and no monitoring rights. The employer does not require the consent of a works council for certain measures, as is the case with unions. In principle, the rights of a works council are limited to the right to demand information and the right of discussion.

Termination of employment

An employment relationship can end with a termination agreement, notice of termination or dismissal, termination with immediate effect, termination during the probationary period, the death of the employee or, in the case of fixed-term employment, the passage of time. Employment relationships with foreign nationals or stateless persons can also terminate due to the withdrawal of a residence permit or an order for expulsion from the country.

Whereas an employee is, in principle, entitled to terminate his/her employment at any time without justification, the employer's right of termination is limited to strictly defined situations:

Dismissal on grounds of redundancy

- dissolution of the employer in whole or in part
- relocation of the employer in whole or in part to another site or
- excess capacity due to a decision made by the employer to modify the substance of the tasks or technical facilities, to reduce the number of employees for the purposes of increasing labour productivity as well as other operational modifications

Termination on grounds of health

- medical certificate confirms loss of previous ability to work or
- occupational illness which arises or is long-term and which renders the previous ability to work impossible

Termination on personal grounds

- failure to satisfy the requirements set out in the legal provisions (which means either statutory or contractual provisions) for performance of the agreed duties, or failure to satisfy the requirements of work performance, without the employer being at fault
- existence of grounds justifying termination by the employer with immediate effect, due to a serious breach of obligations arising from the legal provisions (which means either statutory or contractual provisions) relating to the work performed by the employee. In the case of less serious breaches, termination is permissible if the matter has been communicated to the employee, along with the potential for termination in connection with future breaches of obligations, during the previous six months or
- breach of the employee's duty to observe legal rules imposed on the employee by law during his work incapacity, in an especially serious manner

Generally, the notice period in the event of a notice of termination or dismissal is at least two months for both sides, starting on the first day of the month after the calendar month in which the notice of termination or dismissal was served on the other party. The notice period may be prolonged (for both parties as long as it is the same length) on the basis of either an employment agreement for an individual employee, or a collective agreement for all the employer's employees.

Dismissal on grounds of redundancy and termination on specific health grounds (only in relation to occupational illnesses) constitute special cases in that they give rise to a statutory severance payment claim for the employee. In the case of redundancy, as a matter of principle, the severance payment amounts to at least from one to three times the average monthly salary of that employee (the amount of the severance payment depends on the length of the employment) and in the latter case to at least 12 times the average monthly salary of that employee.

An employer is entitled to terminate the employment relationship with immediate effect in two particular cases: (i) imprisonment of the employee for more than one year due to a criminal offence, or imprisonment of the employee for at least six months due to a criminal offence committed within the context or in direct connection with his/her responsibilities as an employee; or (ii) a particularly serious breach by the employee of his/her obligations under the legal provisions (which means either statutory or contractual provisions) relating to his/her responsibilities.

Extra protection against dismissal, whether ordinary or with immediate effect, is enjoyed by certain categories of employees whose social situation is temporarily difficult. This concerns employees who are temporarily incapable of working (for instance, due to an illness),

women who are pregnant, women on maternity leave (up to six months after the birth of the child) and employees on parental leave (up to the third birthday of the child).

If an employee considers an employer's notice of termination void (for instance, the employee considers that the notice breaches the Labour Code) and informs the employer without delay after having received the notice that they insist on remaining employed, the relationship will continue and the employer must keep paying the employee's salary. If the employer refuses to respect this and stops paying a salary, the employee may then file a claim for wrongful dismissal within two months of the date the relationship should have come to an end as a result of the purported termination.

The new Civil Code also introduced general legal regulations for any non-competition agreement, which also apply to non-competition agreements that prohibit the employee from competing with the employer for an agreed period after the termination of the employment relationship. Pursuant to the Labour Code, the non-competition agreement can be agreed upon for a maximum period of 12 months after the termination of the employment relationship, and the employee must receive appropriate compensation, at least in the amount of half of the employee's average monthly earnings for each month of the obligation to not compete with the employer. According to the new Civil Code, every non-competition agreement must also specify the territory in which it is applied, the scope of prohibited activities or the scope of persons against which the employee cannot compete with the employer; otherwise it is null and void.

Collective Redundancies

Collective redundancies mean, according to the Labour Code, that an employer terminates the employment relationships of more than approximately 10 % of employees (the figure differs slightly depending on the total number of employees). Before giving notice to individual employees, the matter must be reported in writing to the union (if any) and the labour office (i.e. the authority with jurisdiction over employment relationships and matters connected with the Labour Code and other employment regulations).

If an employer is not able to provide employees with work due to a temporary drop in demand for the employer's service, a special measure called "temporary layoffs" might be taken (either by agreement with the union (if any), or by the approval of the labour office). The regime of temporary layoffs does not mean that the employee is free to work for any other employer. During the temporary layoff, the employees do not work and the employer has to pay to the employees a compensatory wage at the minimum level of 60 % of the respective average earnings of each relevant employee for a period during which the reasons for temporary layoff still exist.

Foreign employees

The Czech Labour Code also applies to employment relationships performed in the Czech Republic where one of the parties is foreign, unless the parties have chosen another jurisdic-

tion as governing law (however, the mandatory rules of the Czech Labour Code would still apply).

In principle EU, EEA and Swiss nationals do not require a work permit in order to take up employment in the Czech Republic. The employer merely has to provide relevant proof and information to the competent employment exchange, while also keeping a register of all EU and non-EU nationals who are in its employment or have been seconded to it by a foreign employer. Nationals of non-EU states require a residence permit and a work permit in order to take up employment in the Czech Republic. The work permit is not required for the mere performance of executive functions, such as for managing directors (jednatel).

In accordance with EU legislation, as of May 2011, residence permit certificates also include biometric data (i.e. a depiction of the individual's face and fingerprints). The certificates are issued in the form of a card with integrated biometric data and the procedure can take up to two months from the day on which the data was obtained.

The above-mentioned amendment regarding the residence permit certificates also introduced a Blue Card – a new type of long-term residence permit to be issued to non-Czech nationals to perform jobs which require a high level of education. Both a residence and a work permit are integrated into that document.

/ Economy & Government

The Czech economy is export-oriented and is closely linked to the major economies of the European Union, especially Germany. The country's GDP (PPP) per capita is the highest in Central & Eastern Europe (surpassing Slovenia in 2014) and has surpassed a number of non-Eastern Bloc states, e.g. Portugal and Greece. It passed through the financial and economic crisis relatively unharmed and is currently on its way to a solid recovery. The annual GDP growth reached 4.3 % in 2015 and the Ministry of Finance predicts 2.5 % growth in 2016 and 2.7 % growth in 2017. After a slight downturn caused by the crisis, the Czech economy is performing well again, with unemployment (4.1 %) remaining well below the EU average (8.8 %).

The legal environment continues to develop in order to minimise the administrative burden for businesses and this should make the Czech Republic even more attractive to new business. Reducing the deficit and improving the structural situation of public finances will be the fiscal policy priorities for the coming years. The main objectives of the government's fiscal policy are reducing the deficit, implementing healthcare and pension system reform, and increasing the effectiveness of government expenditure through a change in public procurement regulation and an introducing an efficient anti-corruption strategy.

The Czech national currency - the Czech Koruna (**Koruna**) - is administered by the Czech National Bank (**CNB**). In November 2013, the CNB introduced and put into effect a new monetary policy, whereby it started using foreign exchange interventions to deliberately weaken the Koruna. The aim of these interventions has been to curb the risk of deflation and thus preserve price stability in the Czech economy in line with the CNB's inflation target of 2 % p.a., all while further boosting exports. In exchange rate terms, the CNB is looking to impede excessive depreciation of the Koruna below CZK 27/EUR, and has therefore purchased foreign currency to maintain the exchange rate above this threshold. At the new, weaker level, the Koruna has been left to float freely in response to market forces. The ultimate duration of this monetary policy will depend on the future development of inflation, as well as other factors such as the overall state of the Eurozone. From the perspective of foreign investors seeking to enter the Czech market, the weak Koruna is very favourable, due to the fact that the already modest costs of highly skilled Czech labour have now decreased even further.

There are very few legal restrictions regarding foreign investment in the country. They mainly arise out of national security considerations or foreign exchange regulation. The Czech Republic is bound by European law on free movement of capital and by bilateral international agreements on the promotion and reciprocal protection of investments. However, certain restrictions to the free movement of capital and payments are set out in the act on Foreign Exchange.

In principle, residents are permitted to undertake contractual obligations towards non-residents and to fulfil the resulting commitments in either Czech or foreign currency. Residents and non-residents are entitled to buy foreign currency to acquire property abroad, and

to export and import Czech and foreign currencies. Certain exchanges are subject to a duty to notify the Czech National Bank. Foreign exchange regulation also plays a role in the fight against money laundering, which is also targeted by specialised money laundering regulations arising out of European law. The profits of a Czech subsidiary can be repatriated to its foreign parent company freely (subject to appropriate withholding taxes) in the form of dividends, interest, royalties, management fees, return of capital on liquidation or others.

The Czech Republic offers numerous investment incentives without discriminating between domestic or foreign investors. The system of investment incentives is regulated by the act on Investment Incentives. Government incentives usually include cash incentives, such as direct financial support for the creation of new jobs, long-term loans with reduced interest rates, labour-related incentives, a full or partial corporate income tax allowance for a period of up to ten years for newly established companies, production expansion, transfer of land for favourable price or professional help in dealing with necessary documentation and administrative procedures. Qualifying strategic investors can obtain direct financial subsidy of up to 10 % of eligible cost (maximum CZK 1.5 billion for a manufacturing project and CZK 0.5 billion for a technology centre).

The incentives mostly target manufacturing and technological investments with a high export potential. Investment incentives for technology centres and strategic centres are also available. These cover activities such as group headquarters, call centres and R&D centres. Incentives are provided according to a regional key, which means that the size and scope of the incentive depends on the region where it is provided and used. The incentives cannot be provided in Prague. Depending on the size of the company and the location, the support can amount to between 25 % and 45 % of the recognised investment cost. Investments by non-SME's can be supported with up to 25 %. Naturally, the largest amounts of incentives appear to be in regions of high unemployment and those with a lack of relevant existing businesses.

The system of investment incentives is under continuous development which reflects current government policy in the industrial and economic sectors. The incentives system is to reflect the government's goal of boosting research and development and turning the Czech Republic into a knowledge-based economy.

/ Taxation

Employees, Business Vehicles, Other Taxes, Double Tax Treaties

The Czech Republic is a Member State of the EU and important features of the Czech tax system have, therefore, been harmonised with EU tax law, including direct taxes, VAT, excise duties, mutual assistance and administrative cooperation.

Employees

Tax Residency

Individuals who have their permanent home or habitual abode in the Czech Republic (meaning that they are present in the Czech Republic for at least 183 days during the calendar year) are considered tax residents. Individuals who have neither their permanent home nor their habitual abode in the Czech Republic are non-tax residents and are taxable only on their income from Czech sources.

Income Tax and Social Security Contributions: Tax Resident Employees

Tax residents are liable for tax on their worldwide income. Tax on employment income is calculated on the “super-gross” salary, which is the gross salary increased by social security and health insurance contributions payable by the employer (34 %). It is not possible to deduct employees’ social security and health insurance contributions from the tax base. The tax base (decreased by certain other deductions) is subject to a flat tax rate of 15 %. A 7 % “solidarity increase” in personal income tax on taxable income in excess of 48 times the average salary has been applied since 2013. There are various tax allowances and allowances, including a basic allowance of CZK 24,840 p.a. (approx. EUR 920), allowance for a spouse with low income (CZK 24,840 p.a., approx. EUR 920) and for a dependent child (CZK 13,404 p.a., approx. EUR 500).

The tax from employment income is withheld by the employer monthly, with an annual reconciliation.

Social security contributions, where payable, amount to 45 % of gross salary. The employee’s contributions to social security and health insurance of 11 % must be withheld and paid by the employer. The employer’s contributions are levied at the rate of 34 % (if sickness benefits are optionally treated as deductible, the rate of 35 % applies). The maximum annual cap on which social security contributions are payable for 2016 is CZK 1,296,288 (approx. EUR 48,000). There is no cap for health insurance premiums.

Income Tax and Social Security Contributions: Non-Tax Resident Employees

Non-tax resident employees are taxed on income from their work performed in the Czech Republic, if the employer is a Czech company or a Czech permanent establishment, or if he/she spends more than 183 days during any consecutive 12 months in the Czech Republic. However, most Czech double-tax treaties eliminate Czech tax on employment income if all of the following apply:

- the employee's presence in the Czech Republic does not exceed 183 days per tax year
- the remuneration is paid by an employer (or for an employer) who is not resident in the Czech Republic and
- the remuneration of the foreign employer is not paid by a permanent establishment in the Czech Republic

The taxable salary is increased by deemed social security and health insurance contributions of 34 % ("super-gross" salary), regardless of the amount of contributions actually paid. The tax rate is the same as for tax residents. Tax allowances for a spouse and a dependent child are granted to non-residents if at least 90 % of their income comes from Czech sources.

Tax from employment income is usually withheld by the employer. Only if an employee is seconded through a permanent establishment, which is not registered in the Commercial Register, is there no liability to withhold tax. Instead, the employee files a tax return and then pays the tax.

Non-tax resident employees are generally subject to social security and health insurance contributions under the same rules as tax resident employees. However, a social security treaty or the EU social security rules can provide that a seconded employee remains in the social security system of the home state and is not subject to the Czech system.

Business Vehicles

Tax Residency

A business vehicle is tax resident in the Czech Republic if it has a registered office or place of management in the Czech Republic. Subject to an applicable double taxation treaty, a tax resident business vehicle is subject to Czech taxation on its worldwide income.

Income Taxation

Corporations (a limited liability company - s.r.o. and a joint stock company - a.s.) are taxed at the regular corporate income tax rate of 19 %.

A **general partnership (v.o.s.)** is tax transparent and the profits are allocated to the partners and taxed at their level. The taxation of each partner depends on its tax status. If the partner is an individual, the profits are subject to the personal income tax rate of currently 15 %. If the partner is a corporation, the profits are subject to the corporate income tax rate of 19 %.

A **limited partnership (k.s.)** is tax transparent for the general partners – the above described tax treatment for general partnerships also applies to their profit share. The limited partnership is treated as a corporation with respect to profits allocated to the limited partners and are taxed at the level of the limited partners at the regular corporate income tax rate of 19 %.

Tax losses can be carried forward for maximum of five years. The use of losses is limited if a substantial change in the direct shareholding of the company occurs, unless the company

passes the “income structure test”, i.e. at least 80 % of the income has been generated by the same activities as the activities performed in the year the loss accrued.

Non-tax resident business vehicles are subject to limited tax liability on their Czech source income. Income received through a Czech permanent establishment is regarded as Czech source income and, therefore, is subject to income tax at the general rate. Other types of Czech source income include real estate income, income from the sale of securities and shares, the collection of receivables purchased from third parties and fees for certain services. If income from a permanent establishment, real estate and sales of securities is paid to non-EU/EEA residents, a tax security advance must be withheld from the income at the rate of 10 % (1 % for sales of securities or collection of receivables).

Dividends

Dividends distributed by a Czech company to its shareholders are generally subject to a 15 % withholding tax unless a double tax treaty provides for a lower rate. An increased withholding tax rate of 35 % on passive income (including dividends) with respect to tax havens applies as of 2016. No withholding applies to profit distributions to a general partner. Dividends received by Czech residents from a foreign company are included in a separate tax base and taxed at 15 % (with credit for foreign tax).

The participation exemption regime allows for dividends received from subsidiaries resident in an EU/EEA Member State or a qualifying tax treaty state to be exempted if certain requirements (legal form stated in the Annex to the EU-Parent-Subsidiary Directive, minimum participation of 10 %, minimum holding period of 12 months, minimum taxation of 12 % for non-EU/EEA subsidiaries) are fulfilled. Dividends distributed to a parent company resident in an EU/EEA Member State can also be tax exempt under similar conditions.

Interest

Subject to the arm’s length test and thin capitalisation rules, interest paid to a foreign corporate shareholder is tax deductible.

Interest paid to non-tax residents is generally subject to a 15 % withholding tax. An increased withholding tax rate of 35 % on passive income (including interest) with respect to tax havens applied as of 2016. The withholding tax can be reduced or eliminated under the rules resulting from the EU Interest-Royalties Directive or under an applicable double-tax treaty. Residents of other EU/EEA countries can file a tax return and claim a deduction for any related expenses. The withholding tax is considered an advance payment. This may result in a reduction of the tax burden as withholding tax is levied on a gross basis.

Royalties

Royalties paid to non-tax residents are generally subject to a 15 % withholding tax. An increased withholding tax rate of 35 % on passive income (including royalties) with respect to tax havens applies as of 2016. The withholding tax can be reduced or eliminated under the rules resulting from the EU Interest-Royalties Directive or under an applicable double-tax treaty. Residents of other EU/EEA countries can file a tax return under the same rules as described above.

Thin Capitalisation Rules

According to the thin capitalisation rules, interest and other financial costs resulting from that part of related party loans which exceeds four times the equity (or six times the equity if the borrower is a bank or insurance company) are not deductible for tax purposes. Related party loans also include debt which is a part of a “back-to-back” financing arrangement with a related entity (as the “back-to-back” financing is considered financing where a related entity provides a creditor with a directly related credit, loan and/or deposit). Interest costs on profit-participating loans are not deductible even if provided by an unrelated lender.

The non-deductible interest may attract a 15 % (or 35 % if paid to a tax haven) withholding tax, unless the lender is resident in a EU/EEA country.

Controlled Foreign Company Rules

There is no controlled foreign company legislation.

Transfer Pricing rules

If the price agreed between related parties differs from the price that would have been agreed between independent parties under the same or similar terms and conditions (**arm’s-length price**), without such difference being properly documented, the tax authorities are authorised to adjust the tax base by the relevant difference. Income tax law neither specifically regulates transfer pricing methods, nor stipulates how the taxpayer may document possible departures. However, as a Member of the OECD, the Czech Republic has undertaken to follow the OECD Transfer Pricing Guidelines. Advance pricing agreements (binding rulings) are also possible.

Transfer pricing rules apply, not only to cross-border transactions, but to transactions entered into by two Czech taxpayers. Related parties are defined as “persons connected through capital” (direct or indirect connection through at least a 25 % share in capital or voting rights) and “otherwise connected persons” (connection through, for example: management, control, or a business relationship created for the purpose of decreasing the tax).

The excessive part of the price is reclassified as a dividend and, if paid to a non-EU/EEA resident, is subject to a 15 % (or 35 % if paid to a tax haven) withholding tax. The tax rate can be reduced under an applicable double-tax treaty.

Other Taxes

Supplies of goods and services

Supplies of goods and services in the Czech Republic by a business are generally subject to value-added tax (**VAT**). The standard rate is 21 %. Some supplies are taxed at the reduced rate of 10 or 15 % and some supplies are tax exempt (e.g. financial services). The taxation of imports and exports depends on whether the goods are supplied within the EU, or outside. The “reverse charge” regime applies not only to intra-EU supplies of goods and services but also to certain supplies within the Czech Republic, such as the supply of building and assembly work. For these supplies, the duty to report and pay VAT lies with the recipient.

Real estate acquisition tax

In 2014, real estate transfer tax was replaced by real estate acquisition tax. The tax rate is 4 % and is generally levied on either the purchase price or 75 % of the fair market value of the real estate (whichever is higher). Gain from the sale or exchange of real estate is subject to tax payable by the transferor and the transferee serves as the guarantor of the tax payer, unless agreed otherwise between contracting parties. For more details, see the “Real Estate” section.

Real estate tax

Real estate tax is payable by every owner of land or buildings located in the Czech Republic. Real estate taxes are calculated according to size of the property rather than based on its market value. Consequently, real estate taxes in the Czech Republic are not as significant as they may be in other countries.

A real estate tax return must be filed by 31 January of the relevant calendar year (with certain exemptions) if changes to the real estate (including a change in ownership) have occurred since the previous year.

Gift and inheritance taxes

Gift and inheritance taxes were abolished in January 2014. Gifts (or unearned income) are subject to a flat income tax rate of 15 % for individuals, with a variety of exemptions available, e.g. gifts to family members, and of 19 % applicable to legal entities. Unearned income from inheritance is exempt from income tax for both individuals and legal entities.

Gifts (or other unearned income) received in connection with employment and self-employment activities do not qualify for tax exemption.

Road tax

Road tax is levied on cars used for business purposes in the Czech Republic.

Road tax is calculated on an annual basis and depends on the engine capacity and number of axles of the vehicle. Quarterly road tax advances must be paid by 15 April, 15 July, 15 October and 15 December. Any outstanding tax liability must be paid by 31 January of the following year, along with filing of the road tax return by the same deadline.

Excise duties

Excise duties are payable on hydrocarbon fuels and lubricants, wine, spirits, beer, and tobacco products. Excise duties are fixed at a set amount per unit for each group of product.

Energy taxes

Energy taxes include tax on natural gas and other gases, electricity and solid fuels.

Double-tax Treaties

The Czech Republic has double-tax treaties with 85 countries including the US, Hong Kong and all EU countries.

For a list of Czech treaties, see <http://www.mfcr.cz/cs/legislativa/dvoji-zdaneni/prehled-platnych-smluv>.

/ Dispute Resolution

Judicial system

Civil and commercial disputes are decided in district courts, regional courts, superior courts and the Supreme Court. The Constitutional Court stands outside this system of general courts and serves as the ultimate guarantor of the constitution. The Constitutional Court has the power to repeal laws or judicial decisions infringing constitutionally guaranteed rights. Czech civil proceedings have two instances and the possibility of an extraordinary appeal.

The main law on civil litigation is the Civil Procedure Code which contains detailed provisions regarding all aspects of a civil process. In civil litigation, the parties typically file briefs containing (for example) facts, legal arguments, evidence and witness statements, prior to an oral hearing. As a general rule, new evidence may not be submitted after the first hearing, except for certain specific situations in which it may be filed later - such situations are listed in the law. The Czech Civil Procedure Code does not provide for pre-trial disclosure.

As with any type of evidence (e.g. documents, items, expert opinions, reports) that has to be inspected, its evaluation is at the court's sole discretion. The parties must submit the documents referred to in their written statements. If a party is not in possession of a document referred to in its submission, the court may order the other party, or a third party, to produce the specific document.

When filing a claim, the claimant has to pay court fees calculated on the amount in dispute. If the claim is successful, the defendant is ordered to reimburse the claimant for court fees and other costs. However, legal fees reimbursement is capped, which means that reimbursement is unlikely to cover all legal fees in more complex cases. Trials tend to be rather lengthy in the Czech Republic for a number of reasons, including overloading of the judicial system with minor cases.

In 1994, Act No. 216/1994 Coll., on Arbitration Proceedings and Enforcement of Arbitral Awards was adopted. This opened the door to alternative dispute resolution with the same force as judicial decisions. The use of arbitration in the Czech Republic has grown significantly since then, especially in commercial disputes. The principal Czech arbitration institution is the Arbitration Court at the Economic Chamber of the Czech Republic and the Agrarian Chamber of the Czech Republic. Ad-hoc arbitrations are also allowed under Czech law. Mediation and other ADR tools do not yet play a major role under Czech law.

/ Competition

As the Czech Republic is a Member State of the European Union, domestic competition law rules apply only to the cases where there is no European Union dimension, i.e. where the EU law does not assume jurisdiction.

However, the Office for the Protection of Competition regularly cites EU case law as the authority, even in purely domestic cases.

That said, basic concepts of competition law are interpreted similarly or even identically in the Czech Republic as under the EU competition law.

Antitrust

Antitrust issues are governed by Act No. 143/2001 Coll., on the Protection of Competition and on Amendment to Certain Acts (Act on the Protection of Competition), as amended (**Competition Act**). Czech antitrust regulation is largely similar to that existing in EU law.

However, there are some differences. For example, in the Czech Republic there are lower market share thresholds in relation to de *minimis* vertical agreements exempted from the general prohibition of anti-competitive agreements than under EU law. Further, there are no domestic sector-specific block exemptions applicable in the Czech Republic.

Abuse of a Dominant Position

The regulation of behaviour of dominant undertakings is in line EU law.

The Czech Competition Act uses the same definition of dominance, based on the concept of market power, as has been established in EU law in the *United Brands* case.

In exception to EU law, the Czech Competition Act sets a rebuttable presumption that there is no dominance, if the undertaking has less 40 % market share.

Merger Control

A merger/acquisition is subject to notification in the Czech Republic under the following conditions:

- the combined turnovers (for the last accounting period) in the Czech Republic of all the participating undertakings amounted at least to CZK 1.5 billion (approx. EUR 55 million), and at least two of the participating undertakings achieved the turnovers in the Czech Republic of at least CZK 250 million (approx. EUR 9 million) at the same time or
- the turnover of at least one of the participating undertakings (in the case of the acquisition of control, the turnover of the controlled undertaking is decisive) in the Czech Republic is at least CZK 1.5 billion, and worldwide turnover of another participating undertaking is also at least CZK 1.5 billion and
- the merger/acquisition has not been subject to notification under the EC Merger Regulation

As to the timing, the Czech competition authority has a time limit of 30 days for the first phase (Phase 1) assessment of the merger. Within this period, the authority can give a clearance to the merger, provided the merger is not subject to a notification obligation, or it does not give rise to competition law concerns.

If there are some competition concerns, the authority would move to the second phase (Phase 2) assessment, where the contemplated merger would be scrutinised more thoroughly.

In any case, however, the final decision on the merger clearance must be taken not later than five months after the notification has been filed. If the competition authority does not issue a final decision after these five months, the merger is deemed to have been approved.

The Czech Competition Act also recognises a simplified notification procedure. This procedure applies to concentrations where the merging undertakings do not have more than 15 % of combined market share on horizontal level, or more than 25 % on vertical level. Further, the simplified procedure applies to a situation where the joint control over a company changes to the sole control.

Under the simplified procedure, the competition authority makes a one phase assessment of the concentration. The time limit for the decision on the concentration is shortened to 20 days.

For more information see: <http://www.uohs.cz/en/homepage.html>

Private Enforcement of Competition Law

In principle, enforcement of competition law by private parties is allowed in the Czech Republic. However, there is limited experience regarding this and there are no reported cases in the higher courts available.

Theoretically, private enforcement could be possible, regardless of whether the Czech competition authority has already ruled on the alleged breach of competition law. However, if it has already ruled on the alleged breach, civil courts would need to take such decision into account in their own decision-making process.

/ Intellectual Property

The intellectual property law is divided into two main areas - copyright law and the law of industrial property. Industrial property can be protected by patents, utility models, trade marks, designs, industrial designs and protections of the topography of semiconductor products. Each of these parts of intellectual property law are regulated within the Czech Republic and protected by particular laws.

Copyright

Copyright and related rights (i.e. rights of performing artists, producers of audio and audiovisual recordings, broadcasters and also the special right of makers of databases) are regulated by Act No. 121/2000 Coll., on copyright, rights related to copyright and on the amendment of other laws (**Copyright Act**), as amended.

The Copyright Act regulates the protection and use of copyright (and related rights such as ownership of an artistic performance, the right of the producer of an audiovisual recording to his recording and broadcasting and publication etc.). The subject of the copyright must be a literary or other work of art or scientific work, which is the unique outcome of the creative activity of the author and is expressed in any objectively perceivable manner. A computer program can also be subject to copyright protection if it is original in the sense of being the author's own intellectual creation. The right holder is entitled to use, licence or prevent others from using the work. Copyright protection exists automatically, without any registration requirement and lasts for 70 years after the death of the creator. According to the Czech copyright law, only a natural person can be the creator (author) of the work. A company, as the creator's employer, is only entitled to exercise economic rights to the creator's work. A creator may defend his rights by claiming recognition of his authorship and the prohibition of the exploitation of his rights. Appropriate remedies for infringement include the requirement to issue an apology or damages.

Patents and utility models

Technological inventions can be protected by patents, provided that they are new, inventive and have an industrial application. In the Czech Republic, patents can be granted under the Patent Act or under the European Patent Convention. If the invention was created by an employee in the scope of their employment, patent rights accrue to the employer (in the absence of agreement otherwise). The patent holder is entitled to use, licence or prevent others from using the patent. The term of protection is 20 years from the date of the application (subject to payment of yearly renewal fees). To gain patent protection, a patent application has to be filed either with the Czech Industrial Property Office (**CIPO**) or with the European Patent Office. The relevant patent office then examines the patentability of the claimed invention. The patent right can be enforced by the holder or (with the approval of holder) by a licensee. Depending on the circumstances, available remedies include injunctive relief

(permanent or preliminary), damages, destruction of infringing items and criminal prosecution.

Utility models are known as “small patents”. The application procedure is much faster than with patents (just three to four months) and the fees are lower. The term of protection is four years from the filing date of the application, but this may be extended twice, each for three years (with a maximum aggregate term of ten years). Utility model applications are made to the CIPO.

Trade marks

Trade marks are not the outcome of a creative activity but are nevertheless protected by specific legislation.

Trademarks are governed particularly by the following legislation, which is fully harmonised with European Union law:

- a) Act No. 441/2003 Coll., on Trademarks, as amended
- b) Decree No. 97/2004 Coll., concerning the implementation of the Trademark Act

Trade mark protection covers registered signs consisting of any words, letters, numerals, drawings or the shape of goods or their packaging, or a combination of them. To be registered as a trade mark, a mark must be sufficiently distinctive and not merely descriptive of the respective product or service. A trade mark is protected for ten years from the date of the application, with unlimited extensions of ten years each. In essence, there are four types of trade marks: national trade marks registered with the CIPO, international trade marks registered with the International Intellectual Property Office, EU trade marks registered with the European Union Intellectual Property Office (**EUIPO**), and unregistered marks which have obtained a secondary meaning due to their commercial use. The right holder is entitled to use, licence or prevent others from using the trade mark. In order to gain protection, an application, together with the prescribed fee, must be filed. Trade-mark enforcement works in a similar way to patent enforcement.

Industrial Designs

The Czech Act on Industrial Designs defines an industrial design as the appearance of a product or its parts, incumbent signs of line, contour, colours, form, structure or material of the product or its ornamentation. Further conditions for registration by the CIPO are novelty and individual character (**originality**). The term of protection is five years and this may be extended for up to 25 years from the date of the application. The holder is entitled to use, licence or prevent others from using the registered design. A design registration must be filed either with the CIPO or with the EUIPO. Moreover, unregistered designs are protected under the Community Design Regulation, provided that they are new and have an individual character. Protection starts upon the first use of the design and the term of protection is three years from the date the design is made public. The right holder is entitled to use, licence or prevent

others from copying the registered designs. Design enforcement is similar to patent enforcement.

/ Marketing Agreements

Agency Arrangements

Agency arrangements are governed by the new Civil Code, which implements Directive 86/653/EEC on self-employed commercial agents. It contains a number of mandatory provisions to protect commercial agents. An agency contract must be in writing. A commercial agent (or commercial representative) is not permitted to complete commercial transactions, receive consideration or undertake other acts in the name of the principal. Commercial agents are liable for the discharge of obligations by a third party with which they proposed that the principal enter into a commercial transaction, or if they have concluded a commercial transaction in the name of the principal, only if they have undertaken to bear such liability in writing and if they receive extra remuneration for assuming such liability. The new Civil Code allows for exclusive or non-exclusive commercial agency. A commercial agent is entitled to reimbursement of expenses related to his activity, if it is agreed and (unless the contract implies otherwise) only when he is entitled to be paid a commission on the commercial transaction to which such expenses related. If a commercial agency agreement is concluded for an indefinite period of time, it may be terminated by either party giving notice of termination. The law sets out the length of the minimum termination period on a mandatory basis where such period depends on the length of duration of the commercial agency agreement. The notice period must be the same for both parties. If the agent's agreement is terminated, he is entitled to compensation for damage if he has obtained new clients for the principal, and if the payment of such compensation is fair. It is usual to include such provisions, which prohibit the agent from performing those activities that constituted the subject matter of agency, for a certain period of time following the termination of the agency agreement.

Distribution Agreements

Czech law does not specifically regulate distribution agreements. Distribution agreements are assessed within the scope of competition law. If the distributor is not integrated into the supplier's organisation, as is the norm in the Czech Republic regarding the distribution of pharmaceutical products, a distribution agreement will be subject to the act on the Protection of Competition (**APC**) and its provisions on cartels and abuse of a dominant position.

Franchising

Franchise agreements, as such, are not specifically regulated under Czech law. They constitute an "unspecified type of contract" according to the new Civil Code. Unspecified types can contain elements of different types of contract, especially of a licence agreement, an agreement on the transfer of know-how, a rental or leasing contract, a commercial agency agreement, a contract of sale (where goods are supplied), or a contract on the provision of services.

Franchise agreements are also subject to the APC and its provisions are applicable to cartels and abuse of a dominant position and EU competition law.

/ E-commerce

In many respects, the law applicable to e-commerce is the same as the law governing other types of trade, however, there are certain legal features of e-commerce such as special requirements for marketing and entering into distance contracts, and liability for services and information supplied. Pursuant to the act on the Information Society (*Zákon o některých službách informační společnosti*), which is harmonised with EU law and the new Civil Code, the basic rules of fair trading relating to online marketing activities must be adhered to in order to prevent unfair competition.

The act on the Information Society sets out basic rules and demands for electronic business contact for the purpose of sending commercial announcements between businesses and consumers. In principle, businesses have to obtain consent from recipients (i.e. consumers) to conduct marketing activities, and comply with extensive duties to conduct any distance commercial announcements. These duties include clear marking of the message as “Commercial Announcement” and full description of the sender and valid contact business address of the sender for the purpose of de-listing from any future commercial announcements. The business is responsible for the accuracy and comprehensiveness of any data provided.

If the agreement is concluded using the means of remote (long-distance) communication, which enables the parties to enter into an agreement without requiring their physical presence, the new Civil Code extends the list of obligations imposed on goods and service providers in other types of trade, such as the restriction of freedom of contract if it leads to any aggravation of the customer's situation in this legal relationship. Furthermore, it gives extensive rights to consumers, for example, consumers may rescind a distance contract, without giving a reason, within 14 days of the supply of the services or goods, and even longer (within three months) if the business provided them with incomplete or incorrect data on the goods or services.

In 2009, virtual electronic storage units known as “data boxes”, each with unique identification, were introduced to facilitate easy contact between entrepreneurs and State authorities. All State authorities and companies entered in the Commercial Register (as well as certain other entities listed by the law) are required to establish data boxes (this obligation applied to attorneys and tax advisors from 1 July 2012). Communication between these entities, including service of documents, now takes place in electronic form. From 1 January 2010, data boxes have also been used for mutual delivery of documents between natural persons, i.e. data boxes are no longer used to communicate with State authorities only.

The Electronic Signature Act (*Zákon o elektronickém podpisu*) regulates all technical and legal aspects of electronic signatures (for example, the conditions that need to be fulfilled by the e-signing person or consequences on the validity of a document, entailed by the e-signature), as well as relevant certification services and procedures (for example, the conditions that must be discharged by the holder of the certificate). This act is to be replaced by an

EU Regulation (eIDAS) from July 2016 which should enable smooth cross-border recognition of e-signatures as well as several new key enablers facilitating electronic communication and transactions.

Some other Czech Laws also address the issue of e-commerce

- The act of the Civil Procedure Code permits electronic filing (podání), electronic service (doručení) and electronic payment orders.
- The act on Electronic Actions and Authorised Conversion of Documents (zákon o elektronických úkonech a autorizované konverzi dokumentů) deals with those mutual actions between State authorities and persons (natural or legal) which take place in electronic form.

/ Data Protection

The fundamental concepts of personal data protection in the Czech Republic are set out in the Declaration of Fundamental Rights and Freedoms. This document governs (in basic terms) the right to privacy, right to personal data protection, and the “inviolability” of mail.

Furthermore, the Czech Republic signed the Data Protection Convention (Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981 Strasbourg) on 8 September 2000. The Convention became applicable in the Czech Republic as of 1 November 2001.

The specific rules on personal data protection are set out in the Personal Data Protection Act (Act. No. 101/2000 Coll.; *zákon o ochraně osobních údajů*), the aim of which is to protect citizens’ right to privacy of personal data when it is processed, deleted or transferred abroad. This act fulfils all requirements of EU regulations, especially Directive 95/46/EC on data protection. However, new EU legislation on personal data protection will apply from May 2018.

The act distinguishes between “common” personal data and sensitive data. Sensitive data, such as nationality, race or religion, may only be processed with a person’s express consent. The rules for obtaining and processing other personal data are less strict.

The supervising authority for personal data protection is the Personal Data Protection Office (**Office**) (*Úřad pro ochranu osobních údajů*). Every person or legal entity that wishes to systematically collect and process another person’s data must notify the Office of such an intention, unless the processing duty is imposed by another law. According to a report by the Office, most infringements have been committed in relation to video surveillance camera operations, collection of personal data to an unreasonable extent or unsolicited communications from businesses.

/ Product Liability

Product liability can result from law or contract. The most important laws governing product liability are the new Civil Code, the Consumer Protection Act, adopted in 1992, and the act on General Product Safety, adopted in 2001.

The Product Liability Act was abolished in 2013 and replaced by the new Civil Code, which implemented the European Product Liability Directive (Directive 85/374/EEC). This covers bodily injury and property damage to an item exceeding EUR 500 (approximately CZK 13,500) caused as a result of a faulty product. The person who imported the product for the purpose of introducing the product onto the market within the scope of her/his business, shall pay the damage jointly and severally. Liability also arises from a breach of the Act on General Product Safety which regulates, amongst other things, the protection of consumers from dangerous products. Under this act, the Czech Trade Inspectorate, as the administrative body supervising the application of the law, may order the manufacturer, importer or distributor to stop bringing unsafe products onto the market, issue warnings, and order the recall of the unsafe product.

/ Bribery & Corporate Crime

Anti-bribery Provisions

Corruption is perceived as one of the most significant threats to the Czech economy. At the beginning of 2010 a new Penal Code came into force, which provided for more effective criminal prosecution of bribery offences. In both the public and private sectors, it is a punishable offence to offer, promise or provide a bribe, or to ask for, accept or accept the promise of a bribe. The position or nationality of a public official or corporation are irrelevant. A bribe is defined as any unjust advantage consisting of any direct property-related enrichment, or any other advantageous treatment.

Bribery in economic competition constitutes a criminal offence under the Penal Code, or unfair competition conduct under the new Civil Code. Accordingly, a competitor may not offer any benefit to a manager or employee of any third party with the aim of receiving advantageous treatment to the detriment of other competitors.

Laws against Money Laundering

The Czech Republic has implemented all requirements of the EU Money Laundering Directives in the Act on Measures against the Legalisation of Proceeds from Criminal Activities and Financing Terrorism (*Zákon proti praní špinavých peněz*). All businesses have to report suspicious transactions. Furthermore, businesses in the financial sector and related industries, including, but not limited to, lawyers, tax advisors and accountants, have to identify their customers and maintain a monitoring system.

It is a criminal offence to conceal or disable the establishing of the origin of goods or any other property-related assets obtained or originating from criminal activities, regardless of whether the offence was committed in the Czech Republic or abroad.

Corporate Crime – new regulation

On 1 January 2012, a new Corporate Criminal Liability Act came into force. This act sets out, among other things, the manner of punishment for corporate bodies committing certain offences and protective measures against such offences.

/ Real Estate

Ownership Restrictions on Foreign Companies

The acquisition of all types of land in the Czech Republic by foreign natural persons or legal entities is no longer limited. The Foreign Exchange Act (*Devizový zákon*) formerly imposed numerous limitations on acquisitions of real estate in the Czech Republic. On 1 May 2011 the last restrictive rules ceased to apply to land acquisition.

Superficies solo cedit

The full ownership of real estate is recognised under Czech law. Further, ownership rights of real estate benefit from constitutional protection. The expropriation of real property is only permitted in exceptional circumstances and is subject to strict rules set forth by law.

The adoption of the new Civil Code has also affected the status of real estate in the Czech Republic. The main change is a return to the principle that applies in the rest of Europe (except for Slovakia) and which formerly applied in the Czech Republic – “superficies solo cedit” (i.e. buildings are part of land parcels).

As from 1 January 2014, buildings constructed on land parcels owned by the same owner merged with their land parcels. This means that the respective buildings cease to be separate things and become part of land parcels. However, this rule does not apply to buildings that have a different owner to the owner of land parcels on which the building has been constructed – i.e. these buildings remain separate real estate and do not merge with the land parcels underneath them. Czech law distinguishes between rights in rem (i.e. which bind the world) and contractual rights (which only bind the parties to the contract) to real estate. Only rights in rem, in particular ownership, are entered in the Cadastral Register (*Katastr nemovitostí*). It is not possible to have Anglo-American forms of ownership, such as leasehold or trusts, entered in the Cadastral Register. Instead a trustee is registered in the public register as the owner of the property in a trust with the note trustee (*svěřenský správce*).

Form and Registration Requirements upon Owning Land

Any agreement relating to the transfer of real estate (e.g. sale and purchase agreement) must be concluded in writing.

The ownership title to real estate, which is subject to registration in the Cadastral Register, is acquired (if transferred by an agreement) upon the real estate registration in the Cadastral Register.

The registration is retroactive, i.e. the transfer is effective as of the moment of submitting an application for registration to the Cadastral Office (the moment means that the buyer will become the real estate owner until the date, hour and minute when the registration is delivered to the Cadastral Office).

The ownership title to real estate which is not subject to registration in the Cadastral Register (if it is transferred by agreement) is acquired on the effective date of the relevant agreement. A real-estate transfer agreement must contain notarised signatures. If a foreign legal entity is involved as the purchaser, its existence and the authorisation of its representatives must be proven in the Czech Republic by producing a certified extract from the applicable register of companies. In principle, foreign public documents are accepted as evidence but must, as a rule, be translated into Czech and be verified by using a special procedure (verification or apostille).

In addition to transfers under an agreement, ownership title to real estate may also be acquired:

- a) based on a decision of a state authority
- b) by operation of law
- c) by construction (in the case of buildings) and
- d) through a public auction, etc.

A decision of the Cadastral Office on the ownership title registration is needed. Under the new legislation, a decision of the Cadastral Office may have both declaratory and constitutive effect, depending on the nature of documents based on which the registration of the ownership title is to be made.

Therefore, once the relevant transfer agreement is executed, the relevant court decision is issued or another situation occurs, the relevant document has to be submitted to the Cadastral Office for registration. Subsequently, the Cadastral Office shall inform the owner of the real estate and the other entitled persons about the submission of an application for the ownership title registration. The registration cannot be approved earlier than after the expiry of 20 days following the delivery of the relevant information in accordance with the previous sentence. This rule has been adopted with the aim to protect the owners registered in the Cadastral Register from any unlawful disposition with their property. However, it will depend on the practice of the Cadastral Office to whom the information is to be delivered, as the law is unclear in this respect.

The new Civil Code has introduced a rule of material publicity. According to that rule, if the ownership title to real estate is registered in any public register (i.e. Cadastral Register), it is considered registered in accordance with the real legal status (refutable presumption).

As a consequence of the above rule it applies (with effect from 1 January 2015) that, if the status registered in a public register is not in accordance with the real (actual) legal position, the written status is deemed to be in favour of a person who has acquired the right for consideration, in good faith, from a person authorised to do so by virtue of the registered status.

Although this new principle represents a major change, it is to be taken into account that certain specific conditions must be met for its implementation. The detailed description of such conditions is beyond the scope of this document but, to provide an idea of this, we can

at least mention an example where the need for due diligence is maintained. The need for due diligence is excluded only if there are no objective reasons, raising doubts over the compliance of the actual and registered status. In this regard, it is crucial to conduct a personal physical inspection of the real estate (which may detect some legal defects) before its purchase is effected.

Therefore, after 1 January 2015, potential buyers of any real estate should coordinate and discuss the purchase of that real estate with a legal advisor in order to select the most appropriate method of protecting their rights.

Tax Payments on acquiring an interest in land

From 2014, real estate transfer tax has been levied from the purchaser at the rate of 4 %. The sum on which the tax is levied is the agreed price, unless it is lower than 75 % of the administrative value of the property (as determined according to Czech valuation law by an official appraiser or by the tax authorities based on comparable key features in the case of certain commonly transferred properties including flats or family houses).

In case of purchase or exchange contracts, the seller of real estate is liable to pay the real estate transfer tax and the purchaser is the guarantor by law. However, the parties may agree that the purchaser will be directly liable for the payment of the real estate transfer tax, which might considerably simplify the transfer process.

In other cases (such as a court decision, auction), the purchaser is liable to pay the real estate transfer tax. As from 2014, the transfer of buildings is VAT exempt after five years of the granting of the first use permit, with the option to apply VAT at the seller's discretion. The same rules regarding VAT exemption and the option to apply VAT also apply to the underlying land. A transfer of land which qualifies as a building plot and on which no building is erected is always subject to VAT (generally at the rate of 21 %). A transfer of other land on which no building is erected remains VAT exempt.

Existing law is stated as it applied in May 2016.

/ Useful Contacts

Czechinvest

Address: Štěpánská 15, 120 00 Prague, Czech Republic

+420 296 342 500

Fax: +420 296 342 502

info@czechinvest.org

DTIHK (German-Czech Chamber of Commerce)

Address: Václavské náměstí 40, 110 00 Prague, Czech Republic

+420 224 221 200

Fax: +420 224 222 200

info@dtihk.cz

AMCHAM

Address: Dušní 10, 110 00 Prague 1, Czech Republic

+420 222 329 430

Fax: +420 222 329 433

amcham@amcham.cz

Association for Foreign Investment - AFI

Address: Štěpánská 11, 120 00 Prague, Czech Republic

+420 224 911 750 1

Czechtrade

Address: Dittrichova 21, 128 01 Prague, Czech Republic

+420 224 907 820

Fax: + 420 224 913 440

info@czechtrade.cz

/ Further Information

Noerr s.r.o.
Na Poříčí 1079/3a
11000 Prague 1
Czech Republic
+420 233 112111
Fax +420 233 112112

Contact Partners

Managing Partners



Barbara Kusak

Partner, Noerr
Expert for mergers & acquisitions, cross-border transactions, private equity and corporate finance, structured financing, competition law

T +420 233 112111
barbara.kusak@noerr.com



Prof. Jörg K. Menzer

Partner, Noerr
Expert in corporate/M&A , state aid, economic law , venture capital , privatisations, public economic and environmental law

T +40 21 3125888
joerg.menzer@noerr.com

Commercial & Real Estate



Philip Smitka

Associated Partner, Noerr

Expert for mergers & acquisitions, JV, real estate transactions, drafting international agreements, international investment protection law & arbitration procedures

T +420 233 112111

philip.smitka@noerr.com



Eva Krajová, LL.M.

Associate, Noerr

Expert for real estate, corporate, civil law

T +420 233112111

krajova.eva@noerr.com

Corporate



Barbara Kusak

Partner, Noerr

Expert for mergers & acquisitions, cross-border transactions, private equity and corporate finance, structured financing, competition law

T +420 233 112111

barbara.kusak@noerr.com



JUDr. Petr Hrnčíř

Senior Associate, Noerr

Expert for corporate, mergers & acquisitions, regulated industries (in particular energy & mining, healthcare)

T +420 233112111

petr.hrncir@noerr.com

Employment & Pensions



JUDr. Alena Čechtická, Ph.D.

Senior Associate, Noerr

Expert for labour law, civil law, civil procedure law, insolvency law, personal data protection law

T +420 233112111

alena.cechticka@noerr.com

Litigation



JUDr. Václav Berger

Senior Associate, Noerr

Procedural law, expert for civil law, corporate law, real estate law

T +420 233112111

vaclav.berger@noerr.com



JUDr. Miloš Temel, LL.M.

Senior Associate, Noerr

Expert for mergers & acquisitions, antitrust and competition law, litigation and arbitration, contract law

T +420 233112111

milos.temel@noerr.com

Media, IP & IT



JUDr. Ing. Jaroslav Tajbr

Senior Associate, Noerr

Expert for contracts , intellectual property, media and technology , personal data protection, regulatory , vompetition law , dispute resolution

T +420 233112142

jaroslav.tajbr@noerr.com

Regulatory & Governmental Affairs



JUDr. Miloš Temel, LL.M.

Senior Associate, Noerr

Expert for mergers & acquisitions, antitrust and competition law, litigation and arbitration, contract law

T +420 233112111

milos.temel@noerr.com



JUDr. Petr Hrnčíř

Senior Associate, Noerr

Expert for corporate, mergers & acquisitions,, regulated industries (in particular energy & mining, healthcare)

T +420 233112111

petr.hrnCir@noerr.com



Dita Šulcová, Ing., LL.M.

Of Counsel, Noerr

Expert for direct and indirect tax, international taxation, M&A tax structuring of, restructuring

T +420 606430636

dita.sulcova@noerr.com



Noerr s.r.o., May 2016

© Noerr LLP
05/2016

Alicante
Berlin
Bratislava
Brussels
Bucharest
Budapest
Dresden
Düsseldorf
Frankfurt/M.
London
Moscow
Munich
New York
Prague
Warsaw

noerr.com