



P A R T N E R S

attorneys at law

DOING BUSINESS IN THE CZECH REPUBLIC  
2013

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**ALERT: The New Civil Code will become effective in the Czech Republic as of 1 January 2014.**

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## **LEGAL ALERT**

### **NEW CIVIL CODE AS OF 1 JANUARY 2014.**

**AFTER 50 YEARS, THE CZECH REPUBLIC HAS ADOPTED A NEW CIVIL CODE, WHICH WILL REESTABLISH CIVIL LAW IN ITS ENTIRETY AND INTRODUCE COMPLETELY NEW LEGAL CONCEPTS.**

**PRK PARTNERS CLOSELY COOPERATES WITH LEADING CIVIL LAW SPECIALISTS, IN PARTICULAR PROFESSOR KAREL ELIAS, HEAD OF THE TEAM OF AUTHORS OF THE NEW CIVIL CODE.**

**PRK PARTNERS IS READY TO ASSIST YOU IN PREPARING FOR THE CHANGE, INCLUDING THE PERFORMANCE OF AUDITS AND PREPARATION OF NEW FORMATS FOR DOCUMENTS AND PROCEDURES, AS REQUIRED BY THE NEW CIVIL CODE.**

**WE STRONGLY SUGGEST THAT YOU BE PROPERLY PREPARED.**

**FOR MORE INFORMATION PLEASE VISIT OUR WEB PAGES:**

**[www.prkpartners.com/recodification/prk-offers/](http://www.prkpartners.com/recodification/prk-offers/)**

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## CZECH REPUBLIC

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### Article 1. General Information

#### 1.1 Location and Area

The Czech Republic is a landlocked country lying in the heart of Europe. The country borders Poland to the northeast, Germany to the west and northwest, Austria to the south and Slovakia to the east. The Czech Republic has 78,866 square kilometres. The Czech Republic, originally part of Czechoslovakia, is divided into 13 regions and the capital city of Prague.

#### 1.2 Population and Language

The Czech Republic has 10.6 million inhabitants (2012). The majority of inhabitants are Czech; the national minorities are Slovaks, Poles, German, Ukrainians, among others. The official language is Czech.

Since 2004, the Czech Republic is a member of the European Union. The Czech Republic is also a member of the OECD, WTO, WIPO, NATO and many other international organisations.

#### 1.3 Currency

The official currency of the Czech Republic is the Czech crown (CZK). One Czech crown consists of 100 hellers.

Exchange rates against other currencies (source – Czech National Bank, as of 14 March 2013):

EUR	CZK 25.615
USD	CZK 19.802
GBP	CZK 29.590
CHF	CZK 20.747
CAD	CZK 19.291
SEK	CZK 3.057
JPY	CZK 20.526

## 1.4 Important Changes and Sources of Business Information

In 2012 a major recodification of private law was passed. This includes the new Civil Code (effective as of 1 January 2014) and a new regulation of business corporations – new Act on Corporations (effective also as of 1 January 2014).

Therefore, significant changes in this area are expected. Clients of PRK Partners have the unique opportunity to receive professional advice from eminent academics who have joined our team, mainly from Mr. Karel Eliáš, the main author of the new Civil Code, and Mr. Bohumil Havel, the main author of the new Act on Corporations and co-author of the new Civil Code.

Sources of Business Information: Useful links to various public authorities and sources in the Czech Republic may be viewed at

<http://www.prkpartners.com/en/links/czech-republic/>

We list below contacts to most important sources of business information:

- (a) CzechInvest, the Investment and Business Development Agency, address: Štěpánská 15, Prague 2, Postal Code: 120 00, phone: +420 296 342 500, fax: +420 296 342 502, [www.czechinvest.org](http://www.czechinvest.org);
- (b) Ministry of Industry and Trade of the Czech Republic, address: Na Františku 32, Prague 1, Postal Code: 110 15, phone: +420 224 851 111, fax: +420 224 811 089, [www.mpo.cz](http://www.mpo.cz);
- (c) Commercial Register, address: Vyšehradská 16, Prague 2, Postal Code: 128 10, phone: +420 221 997 111, fax: +420 224 919 927, [www.justice.cz](http://www.justice.cz);
- (d) Trade Register, [www.rzp.cz](http://www.rzp.cz);
- (e) Ministry of Finance of the Czech Republic, address: Letenská 15, Prague 1, Postal Code: 118 10, phone: +420 257 041 111, [www.mfcr.cz](http://www.mfcr.cz);
- (f) Czech National Bank, postal address: Na Příkopě 28, Prague 1, Postal Code: 115 03, phone: +420 224 411 111, fax: +420 412 404, filing room address: Senovážná 3, Prague 1, Postal Code: 115 03, [www.cnb.cz](http://www.cnb.cz).

## 1.5 Work and Residence Permits

The principles of free movement of labour apply to all EU, EEA and Swiss nationals working in the Czech Republic, as well as their family members. Employees from these countries do not require work permits, provided they have a travel document or an identity card.

Nationals of all other countries must obtain a work permit to work in the Czech Republic (some exemptions apply to short-term work and certain categories of workers, such as workers who are posted as part of the provision of services by an employer from an EU Member State). In addition to a work permit, a residence visa for employment purposes must be obtained before commencing work.

The Czech Republic is a member of the Schengen Agreement since 21 December 2007, which ensures cross-border movement of visitors without the need for additional visas or authorisation, once initial entry has been made.

### 1.5.1 Visitors for business purposes

All non-EU and non-EEA nationals are generally required to hold a visa prior to entering the country, unless the Czech Republic has entered into a bilateral visa-waiver agreement with the foreign national's country of citizenship. Furthermore, a list of third countries whose citizens are exempted from the visa requirement in Member States of the European Union is stipulated by Regulation (EC) No. 539/2001, as amended by Regulation (EC) No. 2414/2001. A list of countries falling under the visa waiver regime is available at [www.mzv.cz](http://www.mzv.cz). However, non-EU and non-EEA nationals under a visa waiver regime are generally not allowed to perform any economic activity without first obtaining a visa for business purposes.

There are 2 basic types of visas:

- (a) short-term visa – issued for stays of less than 90 days, either for all Schengen countries (Schengen visa) or limited to the Czech Republic in exceptional cases;

- (b) long-term visa – this residential visa is issued for stays longer than 90 days, for specific purposes (e.g. employment).

Visas for business purposes for the Czech Republic (either short-term or long-term) are generally:

- (a) visas for the purpose of employment;
- (b) visas for the purpose of business (both for entrepreneurial activity, and for participation in a legal entity, i.e., visas for members of a statutory body, and for partners or shareholders of such an entity established under the Czech Commercial Code).

#### 1.5.2 *Permitted activities*

Holders of visas for the purpose of employment may be recruited and employed, as long as they have a valid work permit and a valid residence permit (i.e., a valid visa, or upon its expiration, a long-term residence permit) to reside in the territory of the Czech Republic. In such case, the only permitted activity is work in an employment relationship based on a local employment contract, or work in the course of a secondment to the Czech Republic by a foreign legal entity.

Holders of visas for the purpose of business are allowed to perform their own business on the basis of a trade licence, or to stay in the Czech Republic to perform the tasks arising from the scope of activity of a corporate body procured by a partner or shareholder, statutory body or member of a statutory body.

#### 1.5.3 *Procedures*

The whole procedure consists of 2 phases: (i) registration and (ii) visa application. Every foreign national who wishes to stay in the Czech Republic for more than 90 days must register to submit his or her visa application. The foreign national can register by himself or herself, or any other person can register on his or her behalf at [www.visapoint.eu](http://www.visapoint.eu). Registration is free of charge. Submitting a registration does not mean that the visa has been issued. However, without proper registration, a non-EU or non-EEA national will not be allowed to submit its visa application at the relevant Embassy, no interview will be held and the processing of the application will not be initiated.

An application for a visa can only be filed at a Czech Embassy abroad.

It should be noted that the Czech Embassy does not decide on the issuance or refusal of a visa for a stay of over 90 days. This visa is issued by the Ministry of Interior of the Czech Republic (the “Ministry”), on the basis of the application. A visa for a stay of over 90 days is affixed to the non-EU or non-EEA national’s travel document by the Czech Embassy, based on the Ministry’s instructions.

Applications for visas for stays of over 90 days are processed by the Ministry within 90 days (or, in exceptionally complicated cases, within 120 days), from the date of submission of the application. The Czech Embassy will process applications for stays of less than 90 days, within a period of 30 days.

#### 1.5.4 *Documents required for a long-term visa*

Generally, the following documents are required for visas for a stay of over 90 days:

- (a) a travel document
- (b) 2 passport-sized photographs
- (c) a completed application form
- (d) a document confirming the purpose of the stay (work permit, business license or extract from the Czech Commercial Register confirming the non-EU or EEA national is a member of a statutory body or partner of a legal entity)
- (e) a document confirming the availability of accommodation for the period of the stay
- (f) proof of sufficient means to finance the stay (this is not required if the purpose of stay is employment)
- (g) health insurance (employees and certain members of a statutory body of a legal entity are insured by operation of law).

The particulars of a visa application are not to be older than 180 days, except for the non-EU or non-EEA national's travel document and photographs showing to the applicant's actual appearance, unless otherwise stipulated. All particulars, except for the travel document, must be written in Czech (or in a foreign language and accompanied by a certified translation into Czech).

The Ministry may require a non-EU or non-EEA national to submit a medical certificate, if it suspects that he or she suffers from a serious disease. The Ministry may also require an extract from the Criminal Registry (or similar document) of the non-EU or non-EEA national's home country, and from any country where he or she has resided for longer than 6 months during the last 3 years.

The documents that are required for visas for a stay of less than 90 days differ among the various Czech embassies abroad. The documents required therefore vary, depending on where the non-EU or non-EEA national applies for the visa. Please note in this regard that there is no Czech regulation relating to short-term visas in the Czech Republic; as of 1 January 2011, these matters are governed only by European Regulation No. 810/2009 (EC).

#### 1.5.5 *Workers who may not need work permit*

A work permit is not required to employ a non-EU or non-EEA national (visa requirements are not affected by this exception) if he or she:

- (a) has a permanent residence permit
- (b) is a relative of a member of a diplomatic mission, consular authority or employee of an international governmental organisation whose registered seat is in the Czech Republic (reciprocity must be assured under an international treaty ratified by Parliament and binding upon the Czech Republic)
- (c) has been granted refugee status
- (d) performs his or her work in the territory of the Czech Republic within 7 consecutive calendar days or less, or less than a total of 30 days in a calendar year. This applies to: performing artists; educators; academic members of university staff; scientists or members of research and development staff taking part in a scientific conference or meeting; pupils or students under the age of 26; athletes; persons procuring the supply of goods or services in the Czech Republic; persons supplying such services or goods; persons carrying out assembly works under a commercial agreement, or carrying out warranty and repair work
- (e) is employed in accordance with the terms of an international treaty, ratified by Parliament and binding on the Czech Republic
- (f) is a member of a rescue unit, rendering aid under an international treaty on mutual aid, and is involved in removing the effects of accidents and natural disasters and in providing humanitarian aid
- (g) is employed in international public transport, provided he or she has been posted by his or her foreign employer to work in the Czech Republic
- (h) has been accredited in the field of mass media
- (i) is a military or civil member of the armed forces of a sending country in accordance with special laws
- (j) is working in order to prepare for his or her future employment in schools and educational facilities constituting part of the school network or the network of schools, preschools and educational facilities
- (k) has been posted to the Czech Republic within the framework of services provided by an employer based in another EU Member State
- (l) is residing in the territory of the Czech Republic on the basis of a long-term residence visa for the purpose of reconciliation with his or her family
- (m) is residing in the territory of the Czech Republic on the basis of a long-term residence permit issued by another EU Member State for the purpose of employment, provided that more than 12 months have elapsed since the issuance of this permit.

The procedure and requirements of the issuance of a visa are the same for both non-EU and non-EEA nationals who need a work permit (see above).

Further, a “green card” project has been introduced in the Czech Republic. A green card is a permit for long-term residence in the Czech Republic for employment purposes under special circumstances. In addition to green cards, so-called “blue cards” were also introduced in the Czech Republic, as of 1 January 2011. As in the case of green cards, a blue card is a permit for long-term residence for employment purposes. Differently from the green card, the blue card is intended to be issued only for highly qualified positions.

#### 1.5.6 *Work permits*

Non-EU and non-EEA nationals (i.e. not from the EU, EEA states or Switzerland) and their family members are generally not allowed to perform any economic activity without a work permit and a visa for the purpose of employment.

The Czech Republic offers only one type of work permit (in contrast, green card and blue card combine a residence permit and work permit in one document), which is granted for a maximum of 2 years and is renewable. There is currently no limit as to how many times the work permit may be renewed.

Employers may employ non-EU, non-EEA nationals, or their family members, only if it is not possible to employ a Czech or an EU national, unless the non-EU and non-EEA nationals are seconded to the Czech Republic by their foreign employers. Moreover, due to a negative situation at Czech labour market, Ministry of Work and Social Affairs may temporarily stipulate limits on work permits issuance. Currently, work permits are not issued to workers with a low level of education.

#### 1.5.7 *Procedures (Work permit)*

Before applying for a work permit, a Czech Republic registered employer must advertise the available position with the local Labour Office, within 10 days of creating it or making it available. The Labour Office then advertises the open position for a certain period.

The non-EU or non-EEA national files a work permit application, but a proxy holder may submit the application on his or her behalf. A work permit application must be made at the local Labour Office.

Once the work permit application has been filed with the local Labour Office, the processing time is approximately 30 to 60 days.

#### 1.5.8 *Documents (Work permit)*

The following documents must be submitted with the work permit application:

- (a) one passport-size photograph
- (b) a photocopy of the page of a travel document containing the basic identification information about the non-EU or non-EEA national
- (c) a declaration of the employer that it will employ the non-EU or non-EEA national
- (d) a notarised copy of a document of professional competence for the field in which the third-country national is to work in the Czech Republic (vocational certificate, certificate of matriculation, university diploma, etc.)
- (e) other documents if the nature of the job requires, or if a published international agreement the ratification of which has been approved by Parliament, which is binding for the Czech Republic, so stipulates.

Enclosures in foreign languages are to be submitted in their original form or in the form of a notarised copy, together with an official translation into Czech. Within the measures aiming to protect the Czech labour market, Labour Offices currently also require verification of documents of professional competence, so-called “*nostrification*.” This means in practical terms that, e.g. a university diploma issued abroad must be verified by a corresponding Czech university.

#### 1.5.9 *Special preference categories*

A work permit must be sought even by a non-EU or non-EEA national who wishes to work in the Czech Republic in an employment relationship with a foreign employer. The foreign employer must send him or her for that work on the basis of a commercial or other type of agreement with a domestic legal entity or natural person.

Other exemptions, when a work permit is not required, are mentioned above.

#### 1.5.10 *Procedures (special preference categories)*

Before signing an agreement under which non-EU or non-EEA nationals are sent to carry out work in the Czech Republic, the domestic legal entity or natural person for which the non-EU or non-EEA national will be sent to work for, must first discuss with the relevant Labour Office the number of employees being sent out, and the dates when they will be sent. Then, the specific non-EU or non-EEA national or proxy holder can apply for the work permit.

Visa requirements are not affected in this case.

#### 1.5.11 *Documents (special preference categories)*

The domestic legal entity or natural person must provide this information to the Labour Office in a special form, available at <http://portal.mpsv.cz/sz>.

The following documents must be submitted:

- (a) a document authorising the domestic legal entity or natural person to engage in business in the Czech Republic
- (b) a document authorising the foreign legal entity to engage in business in the country of its registered seat.

Documents in foreign languages must be submitted in their original form or in the form of a notarised copy, together with an official translation into Czech.

#### 1.5.12 *Lawful stay for dependants*

The following persons are stated to be dependants of EU or EEA nationals:

- (a) a spouse
- (b) a parent, if the citizen of the EU or EEA is younger than 21 years of age
- (c) a child, younger than 21 years, of the citizen of the EU or EEA or his or her spouse
- (d) a dependent direct relative in the ascending or descending line, or such a relative of the spouse of an EU or EEA citizen.

The following persons are stated to be dependants of non-EU and non-EEA nationals:

- (a) a spouse of a non-EU or non-EEA national holding a residence permit
- (b) a minor or an adult dependent child of a non-EU or non-EEA national holding a residence permit
- (c) a minor, or an adult dependent child of the spouse of a non-EU or non-EEA national holding a residence permit
- (d) a minor non-EU or non-EEA national who has been entrusted by a relevant authority's decision into the substitute family care of a non-EU or non-EEA national holding a residence permit, or of his or her spouse; who has been adopted by a non-EU or non-EEA national holding a residence permit, or his or her spouse; whose guardian is a non-EU or non-EEA national holding a residence permit, or his or her spouse. In all cases the care of the minor non-EU or non-EEA national must take place in the territory of the Czech Republic

- (e) a single non-EU or non-EEA national older than 65 years of age or, regardless of his or her age, a non-EU or non-EEA national who cannot take care of himself or herself due to medical reasons (if it is a family reunification with a parent or if the child holds a residence permit in the Czech Republic).

A temporary residence permit is issued for a family member of an EU or EEA national, if the former is a national of the EU or EEA.

The visa or long-term residence permit is issued if there is a family reunification in the Czech Republic.

#### 1.5.13 *Procedures (Lawful stay for dependants)*

A family member of an EU or EEA national, who intends to stay in the Czech Republic on a temporary basis for a period of more than 3 months together with the EU or EEA national, is obliged to request the Ministry for a temporary residence permit. The application must be submitted within 3 months of the date of entry to the Czech Republic.

For the purpose of family reunification of non-EU or non-EEA nationals in the Czech Republic, an application for a visa must be filed at a Czech Embassy abroad. Non-EU and non-EEA nationals, who stay in the Czech Republic on the basis of a visa issued for another purpose, may file an application with the Ministry for a long-term residence permit for the purpose of family reunification in the territory of the Czech Republic.

#### 1.5.14 *Documents*

Together with the application for a temporary residence permit, a dependant of an EU or EEA national is obliged to submit the following documents:

- (a) a travel document
- (b) a document certifying that he or she is a family member of the EU or EEA national
- (c) 2 passport-size photographs
- (d) a document confirming that he or she has comprehensive care health insurance for the entire period of his or her stay in the Czech Republic
- (e) a document confirming that accommodation in the Czech Republic has been secured.

The non-EU or non-EEA national's dependant is generally obliged to submit the same documents as are required for an application for a visa for a stay of over 90 days (see above). As proof of the purpose of the stay, the dependant must submit a document certifying that he or she is a family member of a non-EU or non-EEA national, as described above.

## Article 2. Investment Factors

### 2.1 Government Attitude Towards Foreign Investment

The Czech Republic had a 10% share of the total Foreign Direct Investment (FDI) in Central and Eastern Europe (CEE) in 1997-2008. During this period, FDI represented 6% of the Czech GDP and flowed mainly into the automotive, real estate and alternative energy sectors. In 2008, the Czech Republic attracted over USD 1 billion, primarily into the automotive sector. Due to the global economic crisis, inbound FDI decreased by approximately 19% in 2009; however, this was a lower decline than the CEE average. However the overall FDI in the Czech Republic doubled in 2010 from the previous crisis year of 2009, and in 2012 FDI in the Czech Republic is again increasing (almost doubled from 2010).

Originally, the Czech Republic attracted FDI mainly into the engineering industry. New, large greenfield projects were realised in the automotive sector in the northeast and central part of the country. These investments benefited especially from lower labour costs (in comparison with Western countries), the strong tradition of Czech engineering, as well as the convenient location in CEE.

At present, the structure of FDI is changing. FDI into manufacturing sectors has been replaced by FDI into areas such as research and development (for example, the laser centre ELI<sup>1</sup>, to be situated in Prague), strategic services, and investment projects. The Czech Republic desires to become a destination for investments with high value added, requiring less invested capital. Therefore, the Czech Republic is focusing on negotiations with investors from those areas of R&D and services, to which it can offer an optimal combination of favourable investment factors.

One may generally say that the Czech Republic does not dispose of one or two dominant favourable investment factors, but rather, when viewed from an overall perspective, the Czech Republic offers an interesting mix of advantages for potential foreign investors (notably a highly qualified, flexible and innovative work force, historically having long-term experience with industrial production, and the strategic location of the country).

### 2.2 Economic Trends<sup>2</sup>

#### 2.2.1 Gross domestic product - (bln.CZK)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Current prices</b>	2567.5	2688.1	2929.2	3116.1	3352.6	3662.6	3848.4	3759.0	3799.5	3841.4
<b>Growth % %, real prices</b>	2.1	3.8	4.7	6.8	7.0	5.7	3.1	-4.5	2.5	1.9

The GDP decline in 2012 was 1.2%, attributable mainly to decreasing domestic demand of households for goods and services for final consumption as well as demand of investors for fixed capital. Agriculture, construction and the production of food experienced a mild decline in 2012. In 2012 the manufacturing industry reached similar results as in 2011, with the main decreases in production of transport equipment.

Relevant data for 2012 are not available at the moment of preparing this document.

<sup>1</sup> ELI is a European Project, involving nearly 40 research and academic institutions from 13 EU Member Countries, forming a pan-European Laser facility that aims to host the strongest lasers world-wide.

<sup>2</sup> Source: The Czech Statistical Office as of the date 14 March, 2013. The Czech Statistical Office regularly updates the data in these tables, even for past years.

### 2.2.2 Industrial production

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Growth %, current prices</b>	1.8	1.2	16.1	6.9	8.5	14.1	-0.3	-15.9	9.8	7,2	1.1

Industrial production recovered from the economic crisis in 2010 and, following a significant decline in 2009, industry grew over the next 2 years (2011, 2012). For future prosperity, it will be crucial for Czech producers find new export markets outside the European Union. Therefore, a new export strategy was prepared by Czech Ministry of Industry and Trade in cooperation with local exporters and the general business public, which concluded that a wider stratification of Czech industry will be beneficial in avoiding further dependence on the automotive sector, or the engineering industry. Chemical or chemical-technological industries are promising in this respect.

### 2.2.3 Inflation

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
%	1.8	0.1	2.8	1.9	2.5	2.8	6.3	1.0	1.5	1,9	3.3

The rate of inflation in 2012 was caused mainly by an increase in consumer prices, especially prices of housing (water, electricity, gas and other fuels) as well as food and soft drinks. The average inflation rate in 2012 is higher than in 2011 and the highest inflation in the past 4 years.

### 2.2.4 Unemployment %

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
%	7.3	7.8	8.3	7.9	7.1	5.3	4.4	6.7	7.3	6.7

Generally, the activities of the population of the Czech Republic have been growing while the level of both employment and unemployment increased every year. The number of jobs being offered in 2012 has increased, which is consistent with worldwide results. The regions with the highest rate of unemployment are located mainly in the north (Ústí Region) and northeast of the Czech Republic (Olomouc Region and Moravia-Silesia).

Relevant data for 2012 are not available at the moment of preparing this document.

### 2.2.5 Real wages

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>Growth %</b>	6.1	5.7	3.4	3.0	4.0	4.3	1.4	2.3	0.7	0.5

Relevant data for 2012 are not available at the moment of preparing this document.

### 2.2.6 Balance of payments – accounts (bln.CZK)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
<b>Current</b>		-136.4	-160.6	-147.5	-30.9	-67.1	-156.9	-81.3	-89.3	-146.6	-109.1
<b>Financial</b>	347.8	157.1	177.3	159.9	99.8	125.3	92.2	143.2	174.3	87.9	

The Czech Republic is an open economy. Its exports represent over 30% of all production, and over 72.5% of GDP. The country is therefore strongly dependent on foreign demand. This fact was highlighted by the recent global economic crisis.

The trade balance has been positive every year since 2005, and in 2009, it achieved a surplus of CZK 160 billion. The main business partners of the Czech Republic are EU countries (85% of Czech exports – 33% of Czech exports to the EU are to Germany). The main export commodities are machinery, computer technology and transportation vehicles.

Relevant data for 2012 are not available at the moment of preparing this document.

### 2.2.7 *Indebtedness - % to GDP*

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
<b>State budget balance</b>	-1.8	-4.1	-3.2	-1.8	-2.9	-1.8	-0.5	-5.1	-4.1	-3.7
<b>Public debt</b>	15.4	18.3	20.2	22.2	23.9	24.4	26.0	31.3	35.4	39.0

A coalition of 3 right-wing parties (ODS, TOP 09 and VV) emerged from the Czech parliamentary elections held in May 2010. The coalition has 118 seats (from total of 200) in the lower chamber of the Parliament. The coalition thus has a strong majority to pass necessary reforms of public finances, including (pension and health reforms).

Relevant data for 2012 are not available at the moment of preparing this document.

## 2.3 **Investment Incentives**

The Czech Republic offers various investment incentives such as discounts on income tax, financial support for the creation of new jobs and for the training or retraining of employees, transfer of lands for discount prices.

The provision of investment incentives to foreign investors began in 1998 and culminated in 2002 by the adoption of Act on Investment Incentives. Investment incentives were initially directed towards the manufacturing industry, for investments exceeding the minimum financial threshold of at least CZK 350 million (acquisition of tangible and intangible assets). The limit was later decreased and currently is CZK 100 million.

The amendment to the Act on Investments Incentives effective from 12 July 2012 aims to promote investments into sophisticated projects with technological potential. The significant changes, which have been approved in the amendment, are (i) an expansion of the entities that may receive a grant (the technology centres and business support services centres will be able to get incentives as well as producing factories in manufacturing industry) and (ii) the possibility to obtain a direct investment grant for so called “strategic investments” (newly established) – they can receive a grant (financial support) for capital investment, i.e. acquisition of tangible and intangible assets up to 5% (7% in exceptional cases) of costs. The amendment also included a change to the Act on Income Tax and changed the discounts on income tax, which may be drawn over a prolonged period up to 10 years (instead of the previous 5 years). Investors in regions most affected by unemployment can obtain financial support for the creation of new jobs, and for requalification or training of employees. Generally, the intention 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.

Forms of Investment Incentives are (i) corporate income-tax relief, (ii) transfer of land for favourable prices, (iii) job creation grants, (iv) training and retraining grants, (v) cash grants on capital investments (in the case of strategic investments).

The state aid is provided up to the amount of maximum state-aid stipulated by the Regional Map of State-Aid Intensity. The maximum state-aid amount is, with certain exceptions<sup>3</sup>, provided up to 40% of total eligible costs (30% in the Southwest region).

<sup>3</sup> e.g. the territory of the city of Prague is excluded from the possibility to receive investment incentives

Project funding can also be found through programs at ministries or regional councils of cohesion financed by the European Union or the Czech Republic (e.g. infrastructure development, program at the Ministry of Industry and Trade to support business and innovation or the program at the Ministry of Labour to support employment and requalification).

## 2.4 Freedom of Operation - Requirements and Regulations

The Czech Republic is a democratic market economy and a member of the European Union.

There are no general restrictions on foreign investment. Foreign persons or entities can operate a business under the same conditions and in the same extent as Czech persons. However sectors such as banking or trading in military equipment have certain limitations or registration requirements, and foreign entities need to register their long-term branches in the Czech Commercial Register.

### 2.4.1 Competition law and intellectual property

Industrial property rights include the protection of results of technical creative work (patents and utility models), subjects of industrial designing protection (industrial designs), rights to a mark (trademarks and geographical indications) and topography of semiconductor products protection. Protection is available in the Czech Republic for national, regional, international and Community IP rights.

### 2.4.2 Trademarks

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

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

A trademark is a sign capable of graphical expression, consisting especially of words, letters, numbers, colours, drawings or shapes of products or packages, serving to distinguish goods or services on the market.

The purpose of a trademark is to distinguish goods of the same kind, produced by different producers, or services provided by different service providers. Trademarks help consumers to identify the various individual goods and services offered on the market.

An application for trademark registration can be filed by any natural or legal person. The application procedure is subject to administrative fees. The Industrial Property Office carries out a formal examination of the application, to find out whether the application has all the necessary particulars stipulated by the law, and then a substantive examination to find out whether the mark being applied for is eligible for registration. Primarily, a mark is not eligible for registration if it is identical to an already registered trademark, if it is a generic name or descriptive denomination, or if it is misleading.

If the mark qualifies for registration in the Trademark Register, the Industrial Property Office will publish the application in the Official Journal, which is issued weekly. Within a period of 3 months from the date of publishing, persons whose previously acquired rights may be potentially infringed by the published mark may raise objections to the registration of the trademark in the Register. If no objections against the mark are filed within the given deadline, or if the objections are rejected as unjustified, the Industrial Property Office will register the applied designation in the Trademark Register.

The trademark registration is valid for 10 years from the date of the filing of the application. However, the protection period can be repeatedly renewed for another 10 years upon request, subject to payment of renewal fee.

Upon the registration of the trademark in the Trademark Register, the owner of a trademark acquires an exclusive right to use the trademark.

### 2.4.3 Industrial designs

Industrial design means the appearance of a product or its part, resulting particularly from the features of the lines, contours, colours, shape, structure and/or materials of the product itself and/or its decorations. Like trademarks, industrial designs may become legally protected by registration in the Register of Industrial Designs, if desired by the designer.

Industrial designs are governed particularly by Act No. 207/2000 Coll., on Industrial Designs, as amended, which is fully harmonised with European Community law.

Not every industrial design may be protected. An industrial design is qualified for protection if it is new, and of an individual nature. An industrial design is considered new if no identical industrial design was available to the public before the date of filing of the application, or before date of origination of priority rights. An industrial design is of an individual nature if the general impression that it invokes in a well-informed user, distinguishes it from the general impression invoked in the same user by another industrial design which has been available to the public before the application's filing date.

The registration of an industrial design into the Register of Industrial Designs is applied for by filing an industrial design application. There are 2 types of applications – single (for one industrial design) and multiple (for 2 or more industrial designs). The industrial design application must contain the particulars of the applicant, an expression of his will to register the industrial design in the Register, and a visualisation of the industrial design, which provides an unambiguous perception of the product's appearance.

The protection period of registered industrial designs is 5 years from the filing date. Protection can be repeatedly renewed upon request for an additional 5 years, up to a total of 25 years (subject to payment of applicable fees).

The acquired protection ensures its owner an exclusive right to use the industrial design, to prevent third parties from using it without approval, to grant licenses to other persons to use the industrial design, or to assign the rights to the industrial design to other persons (including sale of the right). Use of an industrial design particularly means to manufacture or place a product on the market, in which the protected industrial design is embodied or to which it is applied.

#### 2.4.4 *Patents*

Patents are granted for inventions which comply with the legal conditions for granting protection under Act No. 527/1990 Coll., on Inventions and Improvement Proposals, as amended and Decree No. 550/1990 Coll., on Patent Procedure, as amended.

A patent application may be filed in respect of an invention which is new, is the result of inventive research, and which is industrially utilisable. A patent cannot be granted for discoveries, scientific theories, mathematical methods, the appearance of products, plans, rules and methods for performing spiritual acts, computer programs, or simply the presentation of information. The application is subject to an administrative fee.

The Industrial Property Office carries out the patent granting procedure on the basis of a submitted patent application, which may be filed by the inventor, or by a person to whom this right was transferred to by the inventor. If the application does not contain clearly non-patentable solutions and is free of deficiencies, the Industrial Property Office will publish the application in the Official Journal after 18 months from the priority date. A system of deferred examination is valid in the Czech Republic. Substantive examination must be demanded by the applicant or another person, at the latest within 36 months from the filing date of the application.

A patent granted in the Czech Republic is valid for 20 years from the filing date of the application. The fees for maintenance of the patent's validity must be paid in accordance with Act No. 173/2002 Coll., on the maintenance fees for patents, as amended.

#### 2.4.5 *Utility models*

Utility models serve to protect technical solutions that are new, exceed the scope of mere professional skill, and are industrially utilisable. Utility model protection is appropriate for technical solutions of a lower inventive level or of less economic importance, as it is simpler, faster and less costly than patent protection.

Solutions that can be protected by patents and utility models are comparable; however biological reproduction materials and any processes cannot be protected by utility models. The requirements for an application for a utility model are analogical to those of a patent application; however the utility model registration procedure is governed by Act No. 478/1992 Coll., on Utility Models, as amended, based on the so-called registration principle. This means that the Industrial Property Office examines if the basic conditions are fulfilled and records the utility model in the Register without any conducting any examination of novelty and level of creativity (that is, whether the utility model is eligible for protection).

The validity of a registered utility model lasts for 4 years from the filing date of the application. Upon the request, it may be prolonged up to 2 times, each time by 3 years (i.e., the total duration of the validity of a registered utility model is 10 years).

The application procedure as well as the prolongation of the validity is subject to administrative fees.

#### 2.4.6 *Geographical denominations and appellations of origin*

An appellation of origin is the name of a region, a specific place or a country ("region"), used for goods originating in that region, the quality of which or other characteristics are essentially or exclusively given by the particular geographical environment of the region, with its inherent natural and human factors and whose processing, production and preparation takes place in a delimited geographical region. Traditional geographical and non-geographical appellations are also considered as appellations of origin of agricultural products or foods, provided that such goods fulfil other conditions according to the said regulation.

A protected geographical indication is the name of a region used for products originating in that region, provided that it has a certain quality, reputation or other characteristics which may be attributed to that geographical origin, and whose processing or production or preparation takes place in a delimited geographical region.

To register the above mentioned IP rights, the application must be filed to the Industrial Property Office. The procedure and the requirements are set forth by Act No. 452/2001 Coll., on the protection of designations of origin and geographical indications, as amended.

#### 2.4.7 *Copyright*

Copyright and related rights (i.e. rights of performing artists, producers of audio and audio-visual 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 (the Copyright Act), as amended.

The subject matter of copyright is a literary work or other work of art, or a scientific work, which is a unique outcome of the creative activity of the author, and is expressed in any objectively perceivable manner, including electronic form. A computer program, database and photograph is also be considered to be work if it is original in the sense that it is the author's own intellectual creation. On the other hand, the theme of a work, an idea, procedure, principle, method, discovery, scientific theory, mathematical formula, statistical diagram and similar item are not protected by the Copyright Act.

The copyright of a work arises at the moment when the work is expressed in any objectively perceivable form. The protection of copyright is informal - no formal requisites need to be fulfilled for protection to arise.

Copyright includes exclusive personal rights (i.e. the right to decide on the publishing of a work, the right to claim authorship, and the right to the inviolability of the work) and exclusive property rights (i.e., the right to use the work in its initial form or in a form adapted by another person or otherwise modified, and the right to grant authorisation on a contractual basis to any other person to exercise that right). The author cannot validly waive his personal rights. The personal rights are non-transferable and expire upon the death of the author. The property rights persist for the life of the author and for a period of 70 years following the death of the author. If a work is created by joint authors, the duration period of the property rights is calculated from the death of the last surviving author.

#### 2.4.8 *Competition*

Czech competition law regulates restrictive agreements and practices, mergers and abuses of dominant market position. As a general rule, agreements and practices that lead or could lead to violation of competition rules are void. EU anti-trust law also applies.

### **Article 3. Antitrust Issues**

**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 (the “Competition Act”). The Competition Act is based on EU competition law.**

The Competition Act deals with the following issues:

- (a) agreements, decisions or concerted practices distorting competition;
- (b) abuse of a dominant market position;
- (c) merger control;
- (d) action of public administration authorities distorting competition;
- (e) proceedings initiated by the Office for the Protection of Competition (the “Office”) including their initiation, statement of objections, investigation and public access; and
- (f) penalties.

#### **3.1 Agreements, Decisions or Concerted Practices Affecting Competition**

**Agreements between undertakings, decisions of associations of undertakings and concerted practices of undertakings (“Agreement” or “Agreements”) whose aim is to effect or distort competition in the Czech Republic are prohibited and are null and void.**

Under the Competition Act, the following are prohibited:

Agreements that

- (a) directly or indirectly fix prices or other similar business terms and conditions;
- (b) limit or control production, sales, research and development or investments;
- (c) divide markets or supply sources;
- (d) make the conclusion of a contract subject to acceptance of additional performance/obligations which, by their nature or according to commercial use and fair business practices, have no connection with the subject of such contract;
- (e) apply dissimilar conditions to identical or equivalent transactions with other undertakings, thereby placing them at a competitive disadvantage;
- (f) oblige the parties to an Agreement to refrain from trading or other economic co-operation with undertakings that are not a party to the agreement, or to otherwise harm such undertakings (group boycott).

**This prohibition does not apply to Agreements in the following 3 cases:**

##### **1. legal exemptions**

If the Agreements

- (b) contribute to the improvement of production or distribution of goods or to the support of technical or economic development and provide consumers an appropriate portion of the resulting benefit;
- (c) do not impose restrictions on undertakings that are not necessary to achieve the goals stated in (a) above;
- (d) do not enable the undertakings to exclude the competition in respect to a substantial part of the market of goods, which supply or purchase is the subject of the Agreement,

the above prohibition would not apply. The Office may also grant an exception to Agreements with prohibited provisions by implementing a regulation.

## 2. block exemptions

This prohibition does not affect Agreements that do not result in trade between EU Member States but do fulfil other conditions stated by union block exemptions under the Treaty on the Function of the European Union, or that are exempt for the agriculture sector.

The Office may grant block exemptions to other categories of Agreements, provided that the benefits to other participants, in particular customers, are proved to prevail over the market distortion of competition resulting from the block exemption.

## 3. de minimis clause

Agreements with a minor effect on competition are not prohibited (save for “hard-core” restrictions).

### 3.2 Abuse of Dominant Market Position

**One or more undertakings jointly (joint dominance) have a dominant position in the market if their market power enables them to behave, to a significant extent, independently of other undertakings or customers.**

**Abuse of dominant position to the detriment of other undertakings or consumers is prohibited; in particular, such abuse could be:**

- (a) direct or indirect enforcement of unfair conditions in the Agreements with other participants in the market;
- (b) making the conclusion of a contract subject to an agreement of one or more parties to a supplementary performance when the nature of that performance or according to commercial use has no connection with the subject of the contract;
- (c) applying different conditions to identical or equivalent transactions towards particular trading parties, thereby placing them at a competitive disadvantage;
- (d) terminating or limiting production, sales or research and development to the prejudice of customers;
- (e) consistently offering or selling goods for unfairly low prices, which results or may result in a distortion of competition; or
- (f) if the dominant undertaking(s) refuse(s) to grant other undertakings access to its/their own infrastructure facilities for a reasonable reimbursement, when the undertaking/s in the dominant position own/s or use(s) them based on other legal grounds, provided that the other undertakings are unable, because of legal or other reasons, to operate in the same market as the dominant undertaking(s) without being able to jointly use such facilities, and the dominant undertaking(s) fail to prove that joint use is unfeasible for operational or other reasons, or that they cannot be reasonably requested to enable such use. This also applies in due proportion to the refusal of access, for a reasonable reimbursement, of other undertakings to intellectual property or to networks owned or used on other legal grounds by the undertaking(s) in a dominant position.

Unless proved otherwise, an undertaking or undertakings in joint dominance are not considered to be in a dominant position if its/their share in the relevant market achieved during the examined period does not exceed 40%.

### 3.3 Merger Control

#### 1. Concentrations

When a concentration between undertakings occurs, the duty to have the transaction approved by the Office could arise under the condition that the following turnover thresholds are met (provided, however, that the given concentration does not have an EU dimension):

## EITHER

- (a) The combined net (aggregate) turnover achieved in the last accounting period in the Czech market exceeded CZK 1.5 billion (approx. EUR 60 million) for all the undertakings concerned AND at least 2 of the undertakings concerned each achieved a net (aggregate) turnover of more than CZK 250 million (approx. EUR 10 million) in the last accounting period in the Czech market;

## OR

- (b) The net (aggregate) turnover achieved in the last accounting period in the Czech market:
- (i) if the concentration takes the form of a merger by absorption or amalgamation), by at least one of the parties to the merger;
  - (ii) if the concentration takes the form of the purchase of an enterprise or a part thereof (the purchase of an asset)), by the acquired enterprise or its respective acquired part;
  - (iii) if the concentration takes the form of an acquisition of control), by the undertaking over which control is acquired; or
  - (iv) if the concentration takes the form of a “full-function joint venture”, by at least one undertaking creating the joint venture,

exceeded the amount of CZK 1.5 billion AND the worldwide net (aggregate) turnover achieved in the last accounting period by at least one other undertaking concerned exceeded CZK 1.5 billion.

To determine whether the (aggregate) **net turnover thresholds** are crossed, the net turnovers generated by the following persons must be aggregated: (i) the undertakings concerned; (ii) all persons controlled directly or indirectly by the undertakings concerned (subsidiaries); (iii) all persons that will directly or indirectly control the undertakings concerned after the completion of the concentration (parent companies after the completion); (iv) all persons controlled directly or indirectly by the same person who will control the undertakings concerned after the completion of the concentration (sister companies); and (v) all persons jointly controlled by 2 or more persons referred to under (i) through (iv).

The term “**net turnover**” means the net (i.e., exclusive of any taxes and rebates) sales (i.e., amounts derived from the sale of products and provision of services) from ordinary activities of all members of the respective group of undertakings concerned, irrespective of the sector in which the turnover is achieved (however, intra-group sales should be deducted from the overall figures). A specific list of items to be used for calculating the turnover of banks, credit and other financial institutions is provided.

In general, the turnovers need to be attributed to the place where the customer is located.

### 3.4 **Action of public administration authorities distorting competition**

According to the amendment of the Competition Act effective as of 1 December 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 and imposes fines for this infringement of the provision of the Competition Act.

### 3.5 **Proceedings including their Initiation, Statement of Objections, Investigation and Public Access**

- a) Initiation of the Proceedings

The proceedings on cartel agreements and abuse of dominant position are initiated ex officio by the Office. No deadlines are stated for these proceedings.

Proceedings on merger control are initiated based on a notification. **The obligation to file a notification with the Office is mandatory if the above-mentioned thresholds are met.** There is no time limit for filing the notification; however, the Office stipulates a standstill obligation. It means that as a general rule, the undertaking/s concerned cannot implement the rights and obligations arising out from the concentration until the concentration has been cleared by the Office.

Under Czech law, there are 2 types of proceedings:

- (i) simplified procedure (if certain conditions are met); and
- (ii) an investigation of the first phase and (under certain conditions) the second phase.

The time period for the Office to clear a merger is the following:

- the simplified procedure is 20 days from receipt of the completed (short form) notification;
- the first phase is 30 days after receiving a completed (full form) notification; and
- the second phase is 5 months after receiving the completed (full form) notification.

A decision of the Office can be appealed. The Chairman of the Office decides on an appeal.

b) Statement of Objections

Before issuing a decision, the Office issues a statement of objections which contains information on the case, legal assessment of the case, primary evidence and the amount of the fine it intends to impose. After a statement of objections, the Office must also enable the party(ies) to become acquainted with the basis of the decision and it must stipulate a reasonable deadline (at least 15 days) for the party(ies) to propose amendments to the evidence.

c) Investigation

The Office has wide investigation competences, and all undertakings are obliged to undergo such investigation. The Office is entitled to investigate the business or other premises of the undertakings.

The Office is entitled (after preliminary investigation and in some cases) not to initiate proceedings ex officio if there is no public interest in undertaking such proceeding due to the minimal adverse effect of the conduct on competition.

d) Public Access

The Office is required to make certain documentation publicly available. The Office is required to publish all proposals for merger clearance and its decisions in legal force.

### 3.6 Penalties

The Office may impose financial penalties on individuals as undertakings, legal persons, self-employed individuals or public administration authorities for breaching their obligations under the Competition Act.

The maximum penalty on companies for an administrative offence can be as high as CZK 10,000,000, or 10% of the net income for the last accounting period. A fine together with a prohibition on the performance of public or concession contracts will be imposed for a period of 3 years for certain administrative offences. A penalty up to CZK 10,000,000 will be imposed on the public administration authority for an administrative offence committed under the Competition Act.

**The Office will waive the imposition of the fine provided for the commission of certain administrative offences in the following cases:**

If the undertaking

- (a) as the first of all undertakings provides the Office with information and documents concerning a secret horizontal agreement which had not been acquired by the Office and which justifies the performance of a targeted onsite investigation or which proves the existence of such agreement ("**Leniency Program**");
- (b) admits its participation in such agreement;
- (c) does not make pressure on the other undertakings to participate in such agreement, and

- (d) actively assists in the clarification of the case in the administrative proceedings (in particular, provides the Office with all documents and information available to the undertaking about such agreement).

The Office will also reduce the amount of the penalty if certain conditions stipulated by law are fulfilled. The imposition of a penalty or reduction of a penalty may only be waived (or reduced) at a request filed by the undertaking to the Office within the certain period prescribed by the Competition Act.

The responsibility for administrative offences ceases to exist if administrative proceedings are not initiated within 5 years from the day the Office learned of the administrative offence but no later than 10 years after the administrative offence was committed.

**Internet links:** <http://www.compet.cz/>

**Article 4.**  
**Real Estate and Environmental Regulation**

**Please, note that the new Civil Code (Act. No. 89/2012 Coll., as amended) was adopted with effect from 2014 and it fundamentally changes the legal treatment of real estate. For that reason the information presented below will not be accurate after 2013.**

**4.1 Real Estate**

**4.1.1 Acquisition of real estate**

In principle, any entity (a company or person) may acquire and own real estate in the Czech Republic with few restrictions. This means that not only Czech or EU residents, but also residents from third countries may acquire real estate in the Czech Republic.

At present foreign individuals and legal persons (non-residents) are only barred from acquiring agricultural and forest land still owned by the Czech Republic as defined for example in Act No. 503/2012 Coll., on the State Land Office and on the Amendment of Certain Acts, as amended.

Other restrictions on acquiring real estate by foreign persons granted to the Czech Republic by European Union have already expired.

**4.1.2 Registration of real estate transfers**

*Effectiveness of real estate transfers*

Transfer of an ownership title to real estate (e.g., sale and purchase agreement) is effected upon execution of a written agreement and registration in the Cadastral Register of the transfer of the ownership title.

The buyer becomes the legal owner of the transferred real estate upon registration by the Cadastral Office; the effective date of transfer is a date of application submission to the Cadastral Office. This does not apply to transfers of residential and non-residential premises or transfers of real estate during a privatisation process. In such cases, the buyer (company) becomes the owner of the property as of the date of delivery of the application for registration of the transfer to the Cadastral Office. However registration of ownership in the Cadastral Register is not a sufficient proof of ownership and may be challenged due to various reasons. Therefore ownership title due diligence is highly recommended (see below).

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);
- (d) through a public auction;
- (e) by prescription<sup>4</sup>; and
- (f) by other means (e.g., inheritance)

**4.1.3 Due diligence on the title and cadastral register**

Acquiring real estate in the Czech Republic has 2 phases. Once the relevant transfer agreement is executed, it has to be submitted to the Cadastral Register for registration.

**4.1.4 Due diligence**

Before purchasing real estate, the investor should conduct due diligence on the seller's title to the real estate in order to verify the legal status of the ownership title to the property involved.

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<sup>4</sup> The lawful (good faith) possessor of real estate is entitled to become its owner if it keeps the real estate in its possession for a period of 10 consecutive years.

In the course of such due diligence it is important to review all relevant documents related to the property that have been submitted to the Cadastral Authority in order to re-establish the title chain and determine whether or not the seller has a good and marketable title.

Absolute legal certainty regarding ownership title to the real estate is unachievable; however, research in the Cadastral Register and research for potential restitution claims may raise such legal certainty to a satisfactory level.

#### 4.1.5 *Cadastral register*

Real estate (land and buildings) in the Czech Republic must be registered in the Cadastral Register, which is maintained by the Cadastral Office. The Cadastral Register is the primary source of information on real estate located in the Czech Republic, but it alone is not 100% proof of legal ownership. This means that a third party claiming to be a rightful owner could challenge in court the ownership title of a person registered in the Cadastral Register. The Cadastral Register contains information on plots of land and buildings, housing units as parts of buildings and non-residential premises as parts of buildings (including those under construction). Minor buildings are not registered in the Cadastral Register. The Cadastral Register is publicly available, and information on a particular real property can be obtained based on an extract from the Ownership Folio of the Cadastral Register regarding the given real property.

The extract from the Deed of Ownership includes the following information about a real property:

- (a) identification of the owner(s), and each owner's ownership share;
- (b) surface area in square meters;
- (c) type of protection applicable (such as "historical area", if applicable);
- (d) reference to a purchase agreement or other document of title under which the current registered owner's ownership title to the real property was registered in the Cadastral Register, including the file numbers under which such contracts or other documents of title are kept in the archives of the Cadastral Authority;
- (e) restrictions on the ownership title to the real property, i.e. pledges, easements and pre-emptive rights, with specification of the parties in favour of which the rights corresponding to such restrictions exist, the contracts or other titles under which such restrictions came into existence, as well as the file numbers under which such contracts or other documents of title are kept in the archives of the Cadastral Administration;
- (f) rights of governmental or municipal organisations to use or administer the real property, rights of a party to permanent use the real property, rights of a branch office to use the real property owned by the company to which the branch belongs, other possible rights to the real property in question;
- (g) indication that information evidenced in the extract has been affected by a change of legal relations, e.g., a purchase agreement or a lien agreement that has been filed with the Cadastral Administration for registration but has not been actually registered.

The archives of the Cadastral Office are a further source of information regarding real estate. The Cadastral Office also has a cadastral map that should be checked in order to ascertain the exact location of the real property in question.

#### 4.1.6 *Registration of real estate transfers*

The transfer of an ownership title to real estate in accordance with an agreement (e.g., sales and purchase agreement) is effected upon execution of a written agreement and registration of the transfer of the ownership title with the Cadastral Register.

Once the Cadastral Register registers the ownership title of the buyer, the buyer becomes the legal owner of the transferred real estate with effect as of the date the request for registration was submitted to the Cadastral Register.

In the cases of transfer of ownership acquired by decision of a state authority, through a public auction, inheritance or other means, registration of ownership title with the Cadastral Register does not impact the date of acquisition of ownership title, and the buyer becomes the owner of the real property as of the date the respective legal ground for acquisition occurred.

### *Real Estate transfer tax*

Real estate transfer tax has to be paid on transactions of real property. The percentage rate is 4% and it is applied to the higher of (i) the agreed purchase price or (ii) expert valuation of the property. The seller is responsible for paying this tax, but the purchaser is a guarantor. The tax must be paid within 3 months after registration of the purchaser's title in the Cadastre.

Several kinds of transfers are exempt from real estate transfer tax; namely, transfers of property from the state, transfers of property to a company as an in-kind contribution, transfers of property by cooperatives to its members and first transfers of newly constructed buildings.

#### 4.1.7 *Leases*

A lease is the right for someone other than the owner (the tenant) to use a real property. The tenant pays the owner rent for this right. A lease can be established by a contract between the owner and the tenant; it is not published or registered in the Cadastral Register.

Act. No. 40/1964 Coll., the Civil Code, as amended governs general lease and the lease of flats. The regulation of leases for non-residential premises is contained in a special act, No. 116/1990 Coll., which sets out the formal specifics. It is important to follow these specifications in order to avoid invalidating a lease of non-residential premises.

#### 4.1.8 *Other rights to real estate*

In addition to the ownership title, the following other rights to real estate can exist:

Easements – it grants certain specified rights (for example right of transition, right to use, right of living) to a person/entity or to specific land. An easement can be established by a contract or by the decision of a state authority; an easement is subject to registration in the Cadastral Register and becomes effective only upon such registration;

Liens - is commonly used as a security instrument in a loan transaction, it must be executed in writing. It can be established by an agreement, operation of law or by a decision of a state authority and becomes effective upon registration in the Cadastral Register (however, certain exceptions exist for liens established by state authorities – financial offices).

#### 4.1.9 *Zoning and construction procedure*

Construction Act. Construction activities in the Czech Republic are subject to comprehensive zoning and construction regulations set forth in Act No. 183/2006 Coll., the Construction Act, as amended.

Planning. Buildings have to be constructed in accordance with the zoning planning documentation applicable to the respective land plot where the building is to be located.

The decision on the location of a building (zoning permit) is based on the zoning planning documents and must comply with the binding section of these documents. When deciding on the building location, the Building Office also takes into account the opinions of the owners of neighbouring real properties and utility network operators. After the zoning permit is issued, the developer (i.e., the person or entity for whose benefit the building is to be constructed) has to apply for a building permit. The application for the building permit must be accompanied by detailed project documentation. The building permit specifies the binding conditions for the construction and use of the building (architectural, technical, environmental, etc.). A building permit is not required for minor structures, reconstruction and maintenance works. Such works only have to be notified to the Building Office.

Technical Limits. In general, before issuing a zoning permit and building permit, all environmental and hygienic permits, opinions of various state authorities, including a decision on the reclassification of agricultural land (if needed) and the final decision assessing the environmental impact of the building have to be obtained.

Use of the Building. A building may only be used after the issuance of the use permit/approval, which specifies the sole purpose for which the building can be used. The use permit/approval is only issued if the building was constructed in compliance with the decision on the zoning permit, the project documentation approved by the Building Office during the applicable proceedings and the building permit.

#### 4.1.10 *Energy performance of buildings*

According to Act No. 406/2000 Coll., on Energy Management, as amended (“Energy Act”) constructors of new buildings are obliged to fulfil the requirements regarding the energy performance of the building.

The constructor, owner of the building or unit of owners (condominium) (in Czech “*společenství vlastníků jednotek*”) is obliged to submit a certificate of energy performance of the building and a positive binding opinion of the authority regarding the fulfilment of requirements for the energy performance of the building at the time the application is submitted for a building permit or notification.

The certificates of a building’s energy performance of building are used in general to simply and clearly assess the building in terms of its energy performance and allow for buildings to be compared in terms of energy consumption, especially energy for heating, cooling, ventilation, energy for water heating, lighting, etc., and therefore provide a comparison of the costs required for operation.

Constructors, building our unit owners are obliged to obtain a certificate of energy performance of the building in cases specified by the Energy Act, especially the construction of new buildings, major renovations of buildings, etc.). As of 1 January 2013 the certificates must be obtained even when selling the entire building or part of the building (e.g. residential and/or non-residential unit) and/or if the entire building is leased. As of 1 January 2016 it will be also mandatory to obtain a certificate even if only a part of the building (e.g. residential and/or non-residential unit) is leased.

Certificates can only be issued by an expert who has been granted permission by the Ministry of Industry and Trade. The certificate is valid for 10 years from the date of execution.

## 4.2 **Environmental Regulation**

### 4.2.1 *Legislation*

Legislation related to protection of the environment includes all forms of normative acts which can be divided according to various criteria. Legislation that protects more than one aspect of the environment is known as “cross-cutting” legislation (e.g. the Construction Act). If it pertains to one aspect of the environment it is known as a “composition rule” (e.g. the Water Act).

The Czech Republic is also party to a large number of international treaties concerning the environment. Further regulation is included in regulations issued by the European Union (both primary and secondary legislation). The primary law, the Treaty on the European Union, lays down the principle of sustainable development. Provisions of the Treaty on European Union are not directly applicable; therefore, the secondary legislation plays a more important role. Other relevant provisions are also included in the Treaty on Functioning of the European Union whose relevant provisions can be applied directly.

### 4.2.2 *Environmental impact assessment (“EIA”)*

The purpose is to assess the environmental impact of a project before it is started. The legal regulation is contained in Act No. 100/2001 Coll., on environmental impact assessment effective as of 1 January 2002.

The subjects of assessment are buildings, activities and technologies stated in Annex 1 to this Act. Projects under consideration in the EIA process are buildings, roads, factories, mining, facilities – newly built ones as well as modifications to them, e.g. expansion, technological changes, increased capacity, etc.

The process takes place before the competent authority – the Ministry of Environment or a Regional Office – and a broad variety of subjects (including the public) participates. A statement – positive or negative – is issued as a result of the proceeding, and it serves as a basis for the decision to be issued under the specific regulation (e.g. the Construction Act). For certain projects the Construction Act allows the EIA process to be combined with the zoning permit proceeding, i.e. only one proceeding is necessary.

### 4.2.3 *Liability*

Failure to comply with environmental protection gives rise to liability, both criminal and administrative.

Criminal Liability. Criminal offences are included in the new Criminal Code, Act No. 40/2009 Coll., which has been in effect since 1 January 2010. The penalties include imprisonment, a ban on the activity, forfeiture of an item or other asset or a fine.

Administrative Liability. Administrative liability covers both – administrative offences committed by natural and legal entities (or natural persons as entrepreneurs). Offences of individuals are regulated especially in Act No. 200/1990 Coll., on minor offenses. However, they are also included in special laws, such as the

Construction Act, etc. Administrative offences committed by legal entities are not included under one law; furthermore, the procedure is not regulated uniformly.

#### 4.2.4 *Individual components of the environment*

##### *Protection of Air*

Generally speaking, the protection of air ensures that the air is not polluted above the stated level. The operators of stationary sources (with exception of operators of small stationary sources) must, among other obligations, comply with emission limits. They are also obliged to pay pollution fees. A special treatment is applied in smog situations – regulatory measures may be announced – which means that the production or operation of stationary (or mobile) sources is reduced for a necessary length of time.

##### *Protection of Water*

Surface and underground water is subject to legal protection. Use of water for other than personal use is regulated by the water authority. Waste water may only be discharged into surface and underground water with permission and for a fee. Certain hazardous substances cannot be discharged at all. Rivers are also protected, it is forbidden to change their course, etc.

##### *Protection of Climate*

Also the climate is subject to the legal protection (regulated by international, European and national law), especially due to the climate change phenomenon and the impacts and results connected with it, e.g. massive increase in the atmospheric concentrations of greenhouse gases (emissions). Emission trading is one of the efforts to reduce the emissions and it is regulated by Act No. 383/2012 Coll., on the Conditions of Greenhouse Gas Emissions Allowance Trading, as amended. Another tool for improvement the environment and reduction of greenhouse gases is promotion of the use of energy from renewable sources (e.g. energy of biomass, water, wind, the sun and the Earth).

##### *Soil protection*

All land is subject to protection – the form and intensity vary. Agricultural land, which represents more than 50% of the area of the Czech Republic, is protected through the Agricultural Land Fund. Use of agricultural land for other than agricultural purposes is possible only with the consent of the competent authority and for a fee. Also forest lands (more than 30% of the area of the Czech Republic) are protected similarly to agricultural land.

## Article 5. Labour

### 5.1 Employment Relationship Regulations

Employees have statutory protection under the Czech Labour Code (Act No. 262/2006 Coll.). This applies to all employment relationships involving Czech parties in the Czech Republic. 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 jurisdiction as governing law.

Employees from other EEA member states seconded to work in the Czech Republic are also subject to certain statutory provisions of Czech law.

### 5.2 Employment Contract

Czech law requires all employment relationships to be entered into and governed by a written employment contract and failure to do so invalidates the employment contract, however, this can be remedied by drawing up a written contract later. The following must always be agreed in an employment contract:

- (a) type of work
- (b) place of work
- (c) date of commencement of work.

Additionally, employees must be notified of the following, in writing, either in the employment contract itself, or within 1 month from the commencement of the employment relationship:

- (a) the employer's business name and seat, if the employer is a legal entity, or the employer's name and address, if the employer is an individual,
- (b) details about the type of work and the location where the work is to be carried out,
- (c) the annual holiday entitlement or the manner in which the entitlement will be determined,
- (d) information about notice periods for terminating employment,
- (e) information about the employer's wage and remuneration system, payment dates and the place and method of payment,
- (f) weekly working time and schedule,
- (g) information about any collective agreements that apply to the employee.

### 5.3 Implied Terms

Many terms are implied in an employment contract, mainly through provisions of the Czech Labour Code. These include, for example, a trial period (maximum 3 months or 6 months with managerial employee), terms relating to notice periods, access to certain information relating to the employer, non-competition clauses, and others.

### 5.4 Working Hours/Overtime

A working week consists of a maximum of 40 working hours, with certain exceptions.

The employer may demand on average a maximum of 8 hours of overtime work per week, but no more than 150 hours per year. Any additional overtime work requires the approval of the employee. Total overtime work (both required by the employer and performed with the employee's consent) may not exceed an average of 8 hours per week, which means approximately 416 hours per year.

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. For any additional overtime work (or for any overtime work in respect of a rank employee) the employer must pay salary plus an allowance of 25% of average earnings, unless both parties agree that the employee will be provided with unpaid leave instead of such allowance.

## 5.5 **Holiday**

Each employee is entitled to a minimum of 4 weeks of holiday per calendar year. Holiday time may be increased by additional days through a collective agreement, internal regulations or in an individual contract (provided that the rules on equal treatment are respected). Additionally, the Czech Republic currently has 12 statutory public holidays.

## 5.6 **Terms of Employment**

### *Minimum salary*

As of 1 January 2007, the lowest minimum monthly salary was set at CZK 8,000 (about EUR 320) and the lowest minimum hourly salary was set at CZK 48.10 (about EUR 1.95). However, in addition to the lowest minimum wage, there are 8 categories of higher statutory minimum salaries, according to the particular type of work.

## 5.7 **Statutory Rights of Employees Who are Parents or Caregivers**

### (a) **Maternity rights**

Female employees are entitled to 28 weeks of maternity leave. This is extended to 37 weeks for multiple births. Leave can begin as early as the eighth week before the expected date of childbirth; however, employees generally start their maternity leave at the beginning of the sixth week. Maternity leave must not be taken for less than 14 weeks and cannot be terminated or interrupted under any circumstances for 6 weeks after childbirth.

During maternity leave, the employee is entitled to maternity benefits; these are paid by the state.

### (b) **Parental rights**

Parental leave must be granted to female or male employees upon request. Parental leave can be granted at any time between the end of maternity leave (for mothers), or the date of birth (for fathers), and the time when the child reaches the age of 3.

During parental leave the employee is entitled to parental benefits directly paid by the Social Security Administration.

Employees who are parents or caregivers also have other special rights. Most notably, an employer may only give notice of employment termination to a pregnant female worker, or to a female or male worker on parental leave, under special conditions. The employer is also obliged to grant shortened (or specially scheduled) working hours if special categories of employees specified by the Labour Code request so, provided there are no serious operational reasons on the employer's side.

### (c) **Bonuses**

Contractual and discretionary bonuses are common. However, there are no specific regulations, recommended guidelines or standards of reasonableness governing the use of bonus schemes. Only general rules concerning non-discrimination apply.

## 5.8 **Employee Representation**

### (a) **Trade unions and work councils**

Generally, there are 2 forms of employee representation in the Czech Republic: trade unions and work councils. Due to their strong political ties, trade unions have a strong position in the Czech Republic. Currently, however, membership is decreasing. Trade unions are easy to establish and they automatically represent all employees, regardless of membership. There are only a few work councils in existence.

## 5.9 **Collective Agreements**

Collective agreements are common in the public-service sector and most other industries. Collective agreements are concluded at the company level, while higher-level collective agreements may be concluded between a group of employers and the major trade unions. Under certain conditions, higher-level collective agreements can extend to other employers even if they are not signatories to such higher-level collective agreements.

#### 5.10 Dismissals – General

The employer may terminate employment by notice only for the reasons set forth in section 52 of the Czech Labour Code. The employee may give a notice of termination to the employer for any reason whatsoever (or without stating a reason).

#### 5.11 Notice Periods

The notice period for termination of employment is at least 2 months. The minimal notice period stipulated in the Labour Code can be modified by the parties, but must be the same for both the employer and the employee.

The notice period commences on the first day of the calendar month following the month in which the termination notice was delivered to the employee, and ends on the last day of the relevant calendar month.

#### 5.12 Severance Payments

For dismissals for organisational reasons the employee is entitled to a mandatory severance payment in the amount of 1 - 3 average monthly earnings depending on the length of his/her employment. If termination is for health reasons resulting from an occupational disease or work injury – the employee is entitled to a mandatory severance payment of at least 12 times his/her average monthly earnings.

Mandatory severance payments may be increased by virtue of a collective agreement, internal regulation or in an individual employment contract.

#### 5.13 Protected Employees

An employer cannot dismiss certain members (or former members) of a trade union body without the union's prior written consent. An employer may not 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.

#### 5.14 Organisational Changes

##### (a) Business reorganisations and redundancies

Termination as a result of organisational changes is regulated by section 52(a-c) of the Czech Labour Code. The conditions for termination of employment by the employer for these reasons are as follows:

- (i) The employer must decide on the relevant organisational changes before serving the notice of termination.
  - (ii) Employee representatives must usually be consulted before the notices are served. If a large number of employees are affected (e.g. due a reorganisation of the employer), such consultation is obligatory.
  - (iii) A notice of termination must be delivered to each employee.
  - (iv) The grounds for termination must be clearly stated in the notice and identified as being for organisational reasons, so that it cannot be confused with other statutory reasons for termination.
  - (v) At least 2 months notice must be given.
  - (vi) The notice period begins on the first day of the calendar month following the month in which the notice was delivered to the employee. It ends on the last day of the second calendar month after the period began. The Czech Labour Code sets out rules under which notice periods for certain categories of employees can be extended.
  - (vii) A minimum severance pay of 1-3 average monthly earnings must be paid depending on the length of employment.
- (b) Collective dismissals

In addition, employers must notify any relevant employee representatives of a proposed collective dismissal, in writing, at the latest 30 days before notices of termination are sent out. Representatives must

be consulted about possible measures to reduce redundancies or mitigate adverse consequences for employees.

Consultation itself is sufficient to meet the employer's legal obligations – an agreement does not necessarily need to be reached.

Employers must give initial written notification to the labour office of the proposed reorganisation resulting in collective redundancy, no less than 30 days before giving termination notices to the individual employees. After employee representatives have been consulted and a final decision on collective redundancies has been made, the employer must file a final written report to the labour office. Employment may be terminated no earlier than 30 days after this final report has been delivered to the labour office. If the employer fails to deliver a final report at least 30 days before the end of the notice period, the notice period is extended accordingly.

(c) Pensions

Under Czech law, pension contributions are paid as a part of social security contributions. As a benefit, an employee is entitled, at an age stipulated by law, to a state pension.

Currently, company pension schemes or industry-wide pension schemes do not exist. The compulsory pension system organised by the state also includes an option for employees to re-direct a certain amount of their pension contributions to private funds. Private pension funds offer supplementary pension insurance. This is voluntary and arranged by employees personally. In all cases, supplementary insurance is provided by entities unrelated to the employer. A pension fund must be a licensed company located in the Czech Republic.

## 5.15 Financial Services

In the Czech Republic, financial services are provided by a number of institutions. Particularly banks, securities dealers, insurance and reinsurance companies, credit unions, pension funds, investment funds and investment companies are the most important.

As far as the banking sector is concerned, there are 23 banks and 21 branches of foreign banks currently operating in the Czech Republic. (These do not include banks operating in the Czech Republic on the basis of the single license principle.)

Banking is governed by Act No. 21/1992 Coll., on Banks, which regulates, among other, the creation and dissolution of banks and branches of foreign banks, the granting and revocation of banking licenses, single license principle, management and control system, operational and capital requirements, banking supervision, remedial measures and penalties, conservatorship, bank liquidation and banking secrecy.

Other special laws regulate the activity of other financial services providers. Also, there are special rules governing the provision of financial services to consumers.

The Czech National Bank (the "CNB") is the supervisory authority of the financial market in the Czech Republic. Its position and regulatory powers are regulated by Act No. 6/1993 Coll., on the Czech National Bank, as amended. The CNB supervises the banking sector, the capital market, the insurance industry, pension funds, credit unions and payment system institutions. The CNB adopts rules safeguarding the stability of the banking sector, the capital market, the insurance industry and the pension scheme industry. It systematically regulates, supervises and, where appropriate, issues penalties for non-compliance with these rules. Further, the CNB has certain other responsibilities, such as supervision over currency exchange offices, or in the area of money laundering, compliance with takeover bids rules.

As regards the provision of financial services to consumers, the Financial Arbitrator is the competent authority entitled to settle the disputes between institutions (such as banks, institutions issuing electronic payment instruments, consumer credit providers and brokers, etc.) and their clients, regarding transfers of funds, settlement adjustments, collection forms of payment, use of electronic payment instruments, provision of credit, or collective investment products.

## Article 6. Exchange Controls

### 6.1 In General

Trading with foreign exchange assets such as foreign currencies, foreign securities, rights the value of which may be determined in money and obligations derived therefrom, is regulated by Act No. 219/1995 Coll., the Foreign Exchange Act (the "**FE Act**"), as amended. This Act regulates the activities of currency exchange offices, exchange control, and rights and obligations of residents and non-residents. We would like to mention in this respect that a new act on exchange services is being discussed. This act (if it will be passed) will replace and modify the exchange regulation currently included in FE Act.

In 1995, the Czech Crown became a freely convertible currency.

In general, there are no substantial restrictions imposed upon persons operating on the foreign exchange market. The only exceptions are reporting duties in relation to financial operations (which are described below), and certain requirements for currency exchange offices. In addition, special restrictions may be adopted in a state of emergency in foreign exchange economy, however, a state of emergency was not yet declared during the effectiveness of the FE Act.

Only a natural person or legal entity registered by the CNB may carry out the activities of a currency exchange office. Registration is not needed in case the activities of the exchange office are carried on the basis of a banking licence, or a single licence pursuant to the Act No. 21/1992 Coll., on Banks (the "**Act on Banks**"), as amended. Registration is performed by CNB at the request of the person intending to carry out the activities of a currency exchange office. Registration cannot be transferred to another person, and is not subject to legal succession.

State administration of the foreign exchange market is performed by (i) the Ministry of Finance in respect of state bodies, regional and local authorities, state funds, and in respect of all persons with regard of credits provided to, or accepted by, the Czech Republic, and by (ii) the CNB in respect of other residents, and in respect of non-residents. Further, the Ministry of Finance and the CNB, as foreign exchange authorities, inspect compliance with foreign exchange regulations. In doing so, they are entitled to require necessary co-operation from persons under inspection, in particular the provision of relevant documents and explanations.

At a time of extreme state emergency, the law allows the Government of the Czech Republic to impose certain restrictions, which must be observed. A *state of emergency in foreign exchange economy* may be declared by the Government of the Czech Republic, if the balance of payments undergoes an unfavourable development and directly and seriously jeopardises the ability to make payments to other countries, or the internal monetary stability of the Czech Republic. As mentioned above, a state of emergency was not yet declared during the effectiveness of the FE Act.

When the ability to make payments to other countries is directly and seriously jeopardised, it is forbidden:

- (a) to acquire foreign exchange assets in exchange for Czech currency,
- (b) to make any payments and transfers from the Czech Republic to other countries, including transfers of money between banks and their branch offices,
- (c) to deposit funds on accounts abroad.

When the internal monetary stability of the Czech Republic is directly and seriously jeopardised, it is forbidden:

- (a) to sell domestic securities to non-residents,
- (b) to accept financial credits from non-residents,
- (c) to establish in the Czech Republic accounts for non-residents and to deposit money on accounts of non-residents,
- (d) to transfer money to the Czech Republic from another country between banks and their branch offices.

## 6.2 Inward Direct Investment

Under Czech law, a non-resident must report the following information to the foreign exchange authorities for the purposes of compiling the balance of payments of the Czech Republic, in compliance with obligations arising from its membership in international organisations, provided that such information relates to its business activity in the Czech Republic:

- (a) financial claims and liabilities against residents abroad and against non-residents,
- (b) direct investments, financial credits, securities and associated collections, payments and transfers vis-à-vis residents abroad and non-residents, and financial market operations, including operations performed via non-residents,
- (c) the establishment of, and balances on, accounts or other forms of deposit abroad, including the entrusting of money for depositing on an account abroad.

This information must be provided within the scope, for the period, within the time limits, and in the manner prescribed by a CNB decree, or upon the request of a foreign exchange authority.

For the purpose of the reporting duties, a direct investment means the use of funds, or ownership rights the value of which may be determined in money, and other assets to establish, acquire or enlarge lasting economic relations of an investing resident or residents as persons acting in concert in a business abroad, or of an investing non-resident or non-residents as persons acting in concert in a business in the Czech Republic, particularly in one of the following forms:

- (a) the establishment or acquisition of an exclusive share in a business, including any enlargement thereof,
- (b) a participation in a new or existing business where the investor owns or acquires 10% or more of the registered capital of a trading company or co-operative, or 10% or more of the equity capital of a company, or 10% or more of the voting rights or any other share in excess of 10% in the business of a company,
- (c) any other provision or acceptance of funds or other assets or ownership rights the value of which may be determined in money as part of economic relations established by direct investment,
- (d) a financial credit associated with a profit distribution agreement or with the exercise of a significant influence over the management of the business,
- (e) the use of profits from an existing direct investment in the same investment (reinvestment of profit).

## 6.3 Repatriation of Funds

In general, there are no restrictions, except the restrictions which may apply in a state of emergency in foreign exchange economy (see above).

## 6.4 Imports and Exports

Residents are free to enter into contracts with non-residents and agree to fulfil their commitments in Czech or foreign currency, without limitation. In addition, residents may acquire foreign exchange assets, acquire property abroad, and import and export Czech and foreign currency.

Similarly, also non-residents in the Czech Republic may buy funds in foreign currency in exchange for Czech currency and vice versa, acquire other foreign exchange assets, acquire real estate, and import and export Czech and foreign currency.

At the request of a foreign exchange entity, residents and non-residents must specify the purpose of a payment or transfer from abroad, if the purpose has not been stated.

In a time of state emergency, the restrictions mentioned above would though have to be respected.

## 6.5 **Outward Investment**

As mentioned above, direct investment means, within the meaning of the FE Act, also the use of financial assets by a resident in a business abroad, whereas the forms of investment mentioned are used for most commonly.

These investments and other information mentioned above must also be reported to the foreign exchange authorities.

## 6.6 **Portfolio Investment**

No specific restrictions other than as already mentioned above apply.

## Article 7. Establishing a business

### 7.1 Formalities for Establishment

#### 7.1.1 *Establishment and incorporation of companies and partnerships*

Formation of a company or a partnership in the Czech Republic is a 2-step process. Firstly, the company or partnership must be established by execution of a memorandum of association or deed of foundation (predominantly in the form of a notarial deed) by all of its founders. Following its establishment, the company or partnership must be incorporated by registration in the Commercial Register (an official register administered by the courts, containing relevant information about companies and partnerships).

Registration of a company or partnership in the Commercial Register is carried out in court proceedings, in which the court assesses whether the newly established entity meets all statutory requirements for its formation (validly executed deed of foundation, payment of registered capital, legal title to use its registered office, and others). If all statutory requirements are fulfilled, the court will issue a decision on the registration of the company or partnership into the Commercial Register and the company or partnership is then fully incorporated on the day the court's decision enters into legal force.

#### 7.1.2 *Trade licenses and other permits*

In order for a company or partnership to be entitled to carry out business activities, the company or partnership must obtain relevant trade licenses. Act No. 455/1991 Coll., the Trade Licensing Act, as amended, contains list of existing trades, and the requirements which an entrepreneur, or in case of a company or partnership its authorised representative (a so-called *responsible representative*) must fulfil in order for the company or partnership to obtain the required trade license, authorising it to carry out the relevant trade. The requirements for obtaining trade licenses are as follows, which must be fulfilled by the entrepreneur (or in case of companies and partnerships, its responsible representative):

- (a) minimum 18 years of age (required for all trades);
- (b) full legal capacity (required for all trades);
- (c) integrity in the sense of the Trade Licensing Act (i.e., absence of a criminal record in respect of a broad range of criminal acts – required for all trades);
- (d) prescribed education and/or professional experience in relevant field (required for most trades).

Aside from trade licenses, companies and partnerships may also need to obtain various special permits and approvals from state authorities to undertake in certain fields of business (typically waste management, telecommunications, dealing with military equipment, and a number of other specialised areas).

#### 7.1.3 *Data protection convention*

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.

#### 7.1.4 *Obligation to join a chamber of commerce or trade association*

Businesses in the Czech Republic do not have a general obligation to join any chambers of commerce or trade associations. However, for certain traditional independent professions (such as doctors of medicine, attorneys at law, auditors, architects, and others), there is a requirement for obligatory or automatic membership in the relevant chamber or association, which is a prerequisite for performing the given profession.

## Article 8. Principal Forms of Business Entities

In the Czech Republic, business entities are governed primarily 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). As we have already mentioned, at present, the act governing new regulation of business corporations was adopted and it will be effective as of 1 January, 2014. This new legal regulation of business corporations is the second major part of the recodification of private law in the Czech Republic and closely follows the already adopted new Civil Code, also effective as of 1 January, 2014.

### 8.1 Limited Liability Company

The Czech limited liability company, known in Czech as *společnost s ručením omezeným* ("SRO") is the most commonly used business form in the Czech Republic. Among the advantages of the SRO is a relatively low minimum registered capital requirement (CZK 200,000), and limited liability of the members (interest holders) of the SRO for the company's obligations. Each member of an SRO is jointly and severally liable for the obligations of the SRO up to the aggregate amount of 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 terminates.

#### 8.1.1 Establishment of the company

An SRO may be established by one or more natural or legal persons. The maximum number of members of an SRO is 50. An SRO is established upon the execution of a deed of foundation or memorandum of association (in the form of notarial deed) by all its founders.

Apart from the deed of foundation or memorandum of association, an SRO may also adopt articles of association to further govern selected corporate matters.

#### 8.1.2 Registered capital and contribution

The minimal registered capital requirement for an SRO is CZK 200,000. The members' capital contributions to the registered capital of the SRO may be in cash or in-kind contributions. The value of an in-kind contribution into an SRO must be appraised by a court-appointed independent expert.

The minimal capital contribution of a member is CZK 20,000. The total amount of all contributions must equal the amount of registered capital. The contributions must be paid up within the period set forth in the deed of foundation or memorandum of association of SRO, or 5 years from the incorporation (registration) of the company.

#### 8.1.3 Ownership interest

Each member of an SRO may have only one ownership interest. The amount of a member's ownership interest is given by the ratio of the amount of the members' capital contribution and the total amount of the company's registered capital, unless the deed of foundation or memorandum of association provides otherwise.

#### 8.1.4 General meeting and voting rights

The members (interest holders) of an SRO exercise their voting rights at the general meeting, which is the supreme corporate body of the SRO. At general meeting, company's members decide on the company's most important corporate matters. Matters which fall within the powers of general meeting are listed in the Commercial Code. The deed of foundation or memorandum of association of the SRO may generally increase (but not decrease) the scope of powers of the general meeting. As a general rule, the general meeting also may reserve or attract the right to decide upon other matters, which otherwise fall under the competence of other corporate bodies. The general meeting must be held at least once a year. To adopt decisions, at least a majority of the votes of members present at the general meeting must be in favour of a proposed resolution (unless the law or memorandum of association requires a higher quorum of votes, which is the case in most fundamental corporate matters). The general meeting has a quorum if shareholders are present who hold at least one half of all votes, unless the memorandum of association stipulates a higher number of votes. When voting, each member has one vote per each CZK 1,000 of his capital contribution, unless the memorandum of association stipulates otherwise.

#### 8.1.5 Statutory body and management of the company

The statutory body of an SRO, generally empowered to act on behalf the company in all matters, is one or more managing directors. Each managing director is authorised to act on behalf of the company

individually (unless the deed of foundation / memorandum of association or articles of association stipulate otherwise).

The deed of foundation / memorandum of association, articles of association or general meeting may limit or restrict the rights of the managing director(s) to act on behalf of the company in relations with third parties (typically, the deed of foundation or memorandum of association may set forth financial thresholds for the execution of certain transactions by the managing director, which require the prior approval of the general meeting of the company). However it is a concept of Czech law that any such limitations are not effective towards third parties (even if known to them), and an act of a managing director in breach of any such restriction is fully valid and binding for the company (the managing director himself though would be liable to the company for a breach of his duties).

Managing directors are elected and recalled by the general meeting from among the shareholders or other natural persons.

Managing directors are responsible for the overall business management of the company (organisation and management of the company's business affairs, strategic decisions, day-to-day operations, etc.).

#### 8.1.6 *Supervisory board*

SRO may optionally constitute a supervisory board, if provided so in the deed of foundation / memorandum of association or under a special Act. The main competences and responsibilities of the supervisory board are the supervision of the managing directors' activities, revision of the company's accounts and financial statements, and informing the general meeting of its findings at least once per year. The supervisory board must have at least 3 members who are elected by the general meeting. Managing directors of the company cannot be members of the supervisory board.

#### 8.1.7 *Accounting*

An SRO is obliged to keep accounts from the day of its incorporation. The accounting period of an SRO is generally one calendar year, but the company may change its accounting period to a fiscal year different from the calendar year (a period of 12 months starting on the first day of a month other than January). An SRO is obliged to prepare its financial statements for every accounting period. The financial statements must be approved by the general meeting and then filed to the Commercial Register (where they are made available to the public).

#### 8.1.8 *Auditing requirements*

An SRO is obliged to have its financial statements audited if, at the end of the final day of the given accounting period, at least 2 of the following conditions are fulfilled:

- (a) the total book value of the company's assets is more than CZK 40,000,000;
- (b) the company's yearly turnover exceeded CZK 80,000,000;
- (c) the average number of company's employees in the given accounting period was more than 50.

### 8.2 **Joint-Stock Company**

A Czech joint-stock company, known in Czech as *akciová společnost* ("AS") is the corporate form most widely used in the Czech Republic for operation of businesses involving larger investments. The company is fully responsible for its obligations towards third parties; however the shareholders are not personally liable for the company's obligations.

#### 8.2.1 *Establishment of the company*

The company may be established by one founder or several founders (legal or natural persons). The company is established by execution of a deed of foundation / memorandum of association by all its founders in the form of a notarial deed. The company may be established:

- (a) without a public offering of shares – in such case the founders subscribe shares the nominal value of which equals the total amount of company's registered capital; or
- (b) with a public offering of shares – in this case the founders subscribe shares the nominal value of which form part of company's registered capital, and the remaining part of the registered capital is formed by the nominal value of shares to be subscribed by future shareholders, who may subscribe the shares based on a public offering of shares.

An AS is obliged to adopt articles of association which supplement the deed of foundation and govern matters such as to rights and obligations of the shareholders, and rules regarding management of the company.

#### 8.2.2 *Registered capital and shares*

The minimum registered capital of an AS is (i) CZK 2,000,000 for AS established without a public offering of shares and (ii) CZK 20,000,000 for an AS established with a public offering of shares. The registered capital of an AS is divided into shares, the aggregate nominal value of which corresponds with the total amount of the registered capital.

#### 8.2.3 *General meeting and voting rights*

The shareholders of an AS exercise their voting rights on the general meeting, which is the supreme corporate body. At the general meeting, the shareholders may decide on the most fundamental issues regarding the company. Matters which fall within the powers of general meeting are listed in the Commercial Code, and in the articles of association. The general meeting may not however (contrarily to the general meeting of an SRO), reserve or attract the right to decide upon matters not entrusted to it by law or by the articles of association. The general meeting must be held at least once a year. A general meeting may adopt decisions if properly convened and attended by shareholders who together hold shares with an aggregate nominal value exceeding 30% of the company's registered capital (unless the articles of association require a higher participation). To pass a decision, at least a majority of the votes of shareholders present at the general meeting must vote in favour of the proposed decision (unless the law stipulates otherwise, which is the case in most fundamental corporate matters, where a higher quorum of votes is required). The articles of association may designate a higher number of votes required to adopt a resolution.

Voting rights at the general meeting are connected to a share (i.e., its nominal value). The number of votes per one share of a certain nominal value must be set forth in the articles of association.

#### 8.2.4 *Statutory body and management of the company*

The statutory body of an AS is the board of directors, which must have at least 3 members (unless the company has only one shareholder, where it is permissible to have less than 3 members). Each member of the board of directors may act on behalf of the company individually, unless provided otherwise in the articles of association.

The articles of association, a decision of general meeting or the supervisory board may limit the right of the board of directors to act on behalf of the company toward third parties (similarly as in an SRO), however such limitations or restrictions are not effective vis-à-vis third parties (analogically as in an SRO), and an act of a director in breach of any such restriction is fully valid and binding for the company.

The members of the board of directors are elected and recalled by the general meeting; unless the articles of association provide that the directors are elected and recalled by the supervisory board.

The board of directors is also responsible for management of the company and its business.

#### 8.2.5 *Supervisory board*

An AS is by law obliged to constitute a supervisory board. The main competences and responsibilities of the supervisory board are the supervision of the activities of the board of directors, revision of the company's accounts and financial statements, and informing the general meeting of its findings. The supervisory board must have at least 3 members who are elected by the general meeting (however, in companies with more than 50 employees, one third of the members of the supervisory board must be elected by the employees of the company). The number of members must be divisible by 3. Members of the board of directors cannot be members of the supervisory board.

#### 8.2.6 *Accounting*

An AS is obliged to keep its accounts from the day of its incorporation. With regard to the accounting period and financial statements, the above-mentioned information regarding the accounting of an SRO applies *mutatis mutandis* also to an AS.

#### 8.2.7 *Auditing requirements*

An AS is obliged to have its financial statements audited by an independent auditor if, at the end of the final day of a given accounting period, at least one of the following conditions is fulfilled:

- (a) the total book value of the company's assets is more than CZK 40,000,000;
- (b) the company's yearly turnover exceeded CZK 80,000,000;
- (c) the average number of the company's employees in the given accounting period was more than 50.

### 8.3 Partnership

A partnership, or *veřejná obchodní společnost* in Czech ("VOS"), is a company whose partners are personally jointly and severally liable for the company's obligations in full.

#### 8.3.1 Establishment of the company

A VOS may be established by at least 2 natural or legal persons. The company is established upon the execution of a memorandum of association by all of its founders (with signatures notarised).

A VOS is not obliged to adopt articles of association or any other similar document; the relations between the partners are governed by the memorandum of association.

#### 8.3.2 Registered capital and contribution

A VOS is not obliged to create a registered capital, and its members are not obliged to make any capital contributions in the company, unless agreed otherwise in the memorandum of association.

#### 8.3.3 Ownership stakes

The ownership stakes of all partners are equal, unless agreed otherwise in the memorandum of association.

#### 8.3.4 Statutory body and management of the company

The statutory body of a VOS is collectively formed by all its partners; the memorandum of association may though provide that only one (or more) partners are the company's statutory body. If the statutory body is formed by more partners, each partner is authorised to act on behalf of the company individually, unless the memorandum of association provides otherwise.

The memorandum of association may limit or restrict the rights of the company's partners to act on behalf of the company (analogically to an SRO or AS).

Each partner of the company is authorised to manage the business affairs of the company, unless the memorandum of association provides otherwise.

#### 8.3.5 Decision-making in a VOS

A VOS does not establish any special corporate body with ultimate decision-making powers (such as a general meeting). Decisions of a VOS on any matter are adopted by its partners; the consent of all partners is needed to approve a certain matter, unless the memorandum of association or law provides that the consent of only a majority of the partners is needed.

#### 8.3.6 Supervisory body

A VOS does not have a supervisory body. Nevertheless, each partner is entitled to examine all of the company's documents and review the data contained therein, and to require information about the company from the partners designated to manage the business of the company.

#### 8.3.7 Accounting

A VOS is obliged to keep its accounts from the day of its incorporation. With regard to the accounting period and financial statements, the above-mentioned information regarding the accounting of an SRO or AS applies *mutatis mutandis* also to a VOS.

### 8.3.8 Auditing requirements

VOS is obliged to have its financial statements audited by an independent auditor if, at the end of the final day of a given accounting period, at least 2 of the following conditions are fulfilled:

- (a) the total book value of the company's assets is more than CZK 40,000,000;
- (b) the company's yearly turnover exceeded CZK 80,000,000;
- (c) the average number of the company's employees in the given accounting period was more than 50.

## 8.4 Limited Partnership

A limited partnership (in Czech "or *komanditní společnost* in Czech ("KS"), is a company which has 2 types of members (partners):

- (a) limited partners (*in Czech "komanditisté*) and
- (b) unlimited partners (*in Czech "komplementáři*).

Each limited partner is jointly and severally liable for the KS's obligations up to the unpaid amount of his capital contribution, as registered in the Commercial Register. Once the limited partner pays up his capital contribution in full and the same is registered in the Commercial Register, his liability for company's obligations terminates. Unlimited partners are personally jointly and severally liable for the company's obligations in full (and their liability for the company's obligations cannot be decreased or excluded).

### 8.4.1 Establishment of the company

A KS is established upon execution of an memorandum of association by all of its founders (with signatures notarised). A KS must have at least 2 partners – one limited partner and one unlimited partner. Should the company have more than 2 partners, it is sufficient if one partner is a limited partner and the rest are unlimited partners (and *vice versa*). The maximum number of partners is not limited.

A KS is not obliged to adopt articles of association or other similar document.

### 8.4.2 Registered capital and contribution

A KS mandatorily creates a registered capital, the amount of which is dependent on the number of partners and their contributions. Limited partners have an obligation to make a contribution into the registered capital of the company, in the amount agreed in the memorandum of association. The minimum contribution for each limited partner is CZK 5,000. The amount of the agreed capital contributions, including the portion already paid up by the limited partner(s), must be registered in the Commercial Register. The partners may agree in the memorandum of association that the unlimited partners are also obliged to provide a certain capital contribution, however the unlimited partners' contributions are not registered in the Commercial Register and their paying-up has no effect on the liability of the unlimited partners for the obligations of the company.

### 8.4.3 Ownership stake

The Commercial Code does not contain any provisions regarding the ownership stakes of the partners of a KS. This must be provided for in the memorandum of association.

### 8.4.4 Statutory body and management of the company

Each unlimited partner is a statutory body of a KS and is authorised to act on behalf of the company towards third persons individually (unless the memorandum of association stipulates otherwise). Limited partners may not be appointed as the statutory body of the company.

The memorandum of association may limit or restrict the rights of unlimited partners to act on behalf of the company (similarly as in an SRO, AS and VOS, with similar consequences).

Each unlimited partner is authorised to manage the company and its business. The memorandum of association may, however, provide that only designated unlimited partners shall be authorised to business management of the company.

#### 8.4.5 *Decision-making in a KS*

A KS does not establish any special corporate body with ultimate decision-making powers (such as a general meeting). In order for the KS to adopt decisions, a majority of votes of limited partners and unlimited partners is required, unless the law or memorandum of association provides otherwise (as mentioned above, the business management of the company rests with the unlimited partners). Amendments to the memorandum of association agreement though require a unanimous vote of all of the partners, unless the memorandum of association provides that it may be amended by a majority of votes of limited partners and a majority of votes of unlimited partners.

#### 8.4.6 *Supervisory body*

A KS does not have a supervisory body. However, the limited partners are entitled to examine all of the company's accounting-related documents and review the data contained therein, and to require information about the company from the unlimited partners.

#### 8.4.7 *Accounting*

A KS is obliged to keep its accounts from the day of its incorporation. With regard to the accounting period and financial statements, the above-mentioned information regarding the accounting of an SRO, AS or VOS applies *mutatis mutandis* also to a KS.

#### 8.4.8 *Auditing requirements*

A KS is obliged to have its financial statement audited by an independent auditor if, at the end of the final day of a given accounting period, at least 2 of the following conditions are fulfilled:

- (a) the total book value of the company's assets is more than CZK 40,000,000;
- (b) the company's yearly turnover exceeded CZK 80,000,000;
- (c) the average number of the company's employees in the given accounting period was more than 50.

### 8.5 **Branch Offices of Foreign Companies**

Under Czech law, a foreign company is a company which has its registered office outside the Czech Republic. Foreign companies may establish branch offices in the Czech Republic and carry out their business activities in the Czech Republic via their branch offices in the same extent as Czech entities. A branch office of a foreign company is not a legal entity, but serves to represent a foreign company. Therefore, all rights and obligations arising from the business activity of the branch office are not rights and obligations of the branch office, but the foreign company itself.

In order for a branch office of a foreign company to be entitled to commence business activities in the Czech Republic, the branch office must be registered in the Czech Commercial Register, on the basis of an application filed by the foreign company. In addition, the branch office must also obtain all relevant Czech trade licenses and must appoint a responsible representative.

### 8.6 **Insurance Companies**

The activities of insurance companies in the Czech Republic are governed primarily by Act. No. 277/2009 Coll., on Insurance, as amended. Insurance companies in the Czech Republic may be established either as joint-stock companies or cooperatives (a special type of legal entity). Insurance activities may be carried out in the Czech Republic by Czech insurance companies (i.e., companies with their registered office placed in the Czech Republic) or foreign insurance companies (i.e., companies with their registered office outside the territory of the Czech Republic) provided that the conditions stated in the Act on Insurance are fulfilled.

#### 8.6.1 *Czech insurance companies in the Czech Republic*

A Czech insurance company is authorised to carry out its insurance business on the basis of, and in the extent permitted by, a license granted by CNB.

#### 8.6.2 *Foreign insurance companies in the Czech Republic*

A foreign insurance company from another EU country is authorised to carry out its insurance business in the Czech Republic under the freedom of establishing its branches, or under the freedom to temporarily provide services, within the scope in which it is authorised to carry out its insurance business in the country of its registered office and subject to information provided by law.

An insurance company from a non-EU country may carry out insurance business in the Czech Republic only through its branch, based on a special permit granted by the CNB; the details for the issuance of the permit are stipulated by law.

#### 8.6.3 *Establishment of a Czech insurance company*

Since Czech insurance companies may exist as a joint-stock company or a cooperative, the process of its establishment and incorporation is generally governed by the relevant provisions of the Commercial Code, regulating the establishment and incorporation of joint-stock companies and cooperatives.

#### 8.6.4 *Registered capital*

The minimum amount of registered capital of a Czech insurance company is at least CZK 90 million, if the insurance company provides life insurance. For insurance companies which provide other than life insurance, the minimum amount of registered capital ranges from CZK 65 million to CZK 200 million, depending on the class of non-life insurance provided. The registered capital of a Czech insurance company may be formed exclusively by a cash contribution. The registered capital must be fully paid up before filing the application to the CNB for issuance of a permit to carry out insurance activities.

Issues regarding registered capital of foreign insurance companies are governed by their domestic legal regulation.

#### 8.6.5 *Shares or membership interest*

In case the insurance company is established as a joint-stock company, the registered capital is divided into shares which may only be issued as book-entry shares.

In case the insurance company is established in the form of cooperative, the registered capital is divided into membership interests.

#### 8.6.6 *Statutory body and management of the insurance company*

The statutory body of a Czech insurance company is the board of directors, which is responsible for the business management of the insurance company. (The statutory body of foreign insurance companies is governed by their domestic legislation.)

Under the Act on Insurance, certain natural persons may not become a member of an insurance company's board of directors (for example insurance brokers, independent adjusters, members of statutory body of other insurance companies, banks etc.).

#### 8.6.7 *Decision-making body*

If the insurance company is established in the form of a joint-stock company, the ultimate decision-making body is the general meeting.

If the insurance company is established in the form of a cooperative, the ultimate decision-making body is the meeting of members, at which the members may decide on the most important matters of the insurance company.

#### 8.6.8 *Supervisory body*

If the insurance company is established in the form of a joint-stock company, the insurance company obligatorily has a supervisory board.

If the insurance company is established in the form of cooperative, the insurance company obligatorily constitutes a control commission as its supervisory body.

#### 8.6.9 *Technical reserves*

Among the obligations of both Czech and foreign insurance companies is the obligation to create technical reserves (e.g., reserves for insurance benefit, reserves for discounts and bonuses, and others, etc.). Details on creating technical reserves for Czech insurance companies and non-EU country insurance companies are set forth in the Act on Insurance. An insurance company from an EU country creates its technical reserves in accordance with its domestic legal regulations.

#### 8.6.10 *Solvency*

In order to secure its ability to repay its obligations arising from concluded insurance contracts, an insurance company is obliged to maintain, during the entire period of its activity, a certain level of solvency, as prescribed by regulations.

#### 8.6.11 *Accounting*

Both Czech and foreign insurance companies who carry out their insurance activities in the Czech Republic must keep their accounts in accordance with Czech legislation governing accounting (Act No. 563/1991 Coll., on Accountancy, as amended).

#### 8.6.12 *Audit*

Czech and non-EU country insurance companies must have their financial statement audited by an independent auditor. The insurance company is obliged to notify its selected auditor or auditing firm to the CNB. If the CNB does not reject selected auditor or auditing firm within 30 days of notification of selection, the financial statement may be verified by the selected auditor. Further, the CNB is empowered to conduct an extraordinary audit, if it finds deficiencies in the auditor's report which must be submitted to the CNB within 15 days from the date of its publication.

### 8.7 **Banks**

Banking in the Czech Republic is governed primarily by Act No. 21/1992 Coll., on Banks, as amended. Banks may be established in the Czech Republic only as joint-stock companies. Apart from Czech banks (banks with registered office in the Czech Republic), banking may be carried on in the Czech Republic also by foreign banks (banks with registered office outside the Czech Republic) via their branches (and in certain cases also without the necessity of establishing branches).

#### 8.7.1 *Licenses*

In order to be entitled to carry out banking activities in the Czech Republic, Czech banks and generally also foreign banks need to obtain a license from the CNB (in certain cases and subject to conditions stipulated by law obtaining a license is not required – please see 8.7.2). The license determines the scope of banking activities which the bank is allowed to carry out in the Czech Republic (for example investment activities, financial leasing, establishing letters of credit, or otherwise). A banking license is granted for an indefinite period and is not transferable to another person or entity. Together with its application for the license, a bank must also submit to the CNB draft articles of association.

#### 8.7.2 *Activities of foreign banks*

Foreign banks from non-EU countries which intend to carry out banking activities in the Czech Republic are required to establish a branch in the Czech Republic and obtain license from the CNB.

Banks with a registered office in an EU country also generally need to obtain a license from the CNB in order to be allowed to carry out banking activities in the Czech Republic, unless they fulfil specific legal requirements and obtain a so-called unified bank license. In such cases, the EU country bank may conduct its activities in the Czech Republic merely on the basis of a license granted to it by the supervisory authority of its domestic country, in one of the 2 following ways:

- (a) via its branch established in the Czech Republic or
- (b) without a branch established in the Czech Republic, provided that the bank's activities will not have the character of permanent economic activity.

### 8.7.3 *Establishment of a bank in the Czech Republic*

A bank may be established in the Czech Republic only as a joint-stock company, and therefore its establishment is regulated by the relevant provisions of the Commercial Code on joint-stock companies (but the provisions of the Commercial Code apply, unless the Act on Banks provides otherwise).

### 8.7.4 *Registered capital and shares*

The minimum amount of a bank's registered capital is CZK 500 million, and at least this amount of a bank's registered capital must be formed by cash contributions (in-kind capital contributions are permitted in excess of this amount).

### 8.7.5 *General meeting and voting rights*

The general meeting and exercising voting rights of a bank's shareholders are generally governed by the relevant provisions of the Commercial Code on joint-stock companies.

A specific feature of the bank's general meeting is that it may take place only provided that:

- (a) the bank submitted to the CNB, at least 6 days before the date of the general meeting, a list of all its shareholders valid as at the seventh day before the date of the general meeting, and
- (b) the CNB provided the bank its written statement approving the list of shareholders.

### 8.7.6 *Statutory body and management of the bank*

The statutory body of a bank is the board of directors, which must have at least 3 members, and must be composed of the head employees of the bank. Members of the board of directors of a bank may not simultaneously hold memberships in statutory or supervisory bodies of other business entities (with several exceptions set forth in the Act on Banks). The powers and competences of the board of directors must be set forth in the bank's articles of association. Banks are obliged to inform the CNB on proposed membership changes in the bank's board of directors, and changes of the bank's head employees.

The board of directors is responsible for business management of the bank.

### 8.7.7 *Supervisory body*

Banks obligatorily have a supervisory board. The competences of members of supervisory board must be provided for in the articles of association (the supervisory board may though not be empowered with the same authorities which the Commercial Code grants to the board of directors).

### 8.7.8 *Articles of association*

Banks obligatorily adopt articles of association, which regulate, among other:

- (a) the bank's structure and organisation;
- (b) authorities of head employees and other employees;
- (c) organisation of the banks management and control system.

Banks are obliged to inform the CNB on proposed amendments of their articles of association, with regard to the obligatory contents of the articles of association under the law.

### 8.7.9 *Accounting*

Banks and branches of foreign banks are obliged to maintain accounts, keeping on separate accounts their clients' transactions and their own transactions. Banks and branches of foreign banks are required to keep at least a 10 year history of carried out transactions.

### 8.7.10 *Audit*

Banks are required to have audited:

- (a) financial statements;

- (b) management and control system; and
- (c) mandatorily published information (including information on shareholders, its financial situation and otherwise)

In addition to the foregoing, banks must ensure that the auditor elaborates a report on the audit of their financial statements and management and control system, which they are obliged to submit to the CNB within a specified time.

## Article 9. Offshore Banking

### 9.1 Offshore Banking Units

Under Czech law, there are 2 regimes for carrying out banking activities by foreign banks. A difference is made between branches of banks from EEA member states, and from non-EEA member states. Banks registered within the EEA may operate in the Czech Republic without establishing a branch, under the single license principle.

Non EU-member states or states that do not benefit from the same treatment as EU countries; they must establish a branch in the Czech Republic and obtain a Czech banking license from the CNB, provided that their intended activities are of an entrepreneurial nature.

Czech law, in line with EU law (namely Directive 2006/48/EC), allows conducting activities in the Czech Republic on the basis of the single license principle either (i) with the establishment of a branch office, or (ii) without the establishment of a branch office. Under the relevant section of Act No. 21/1992 Coll. on Banks, banks having their registered office in an EEA member state are authorised to carry out the activities listed in the above-mentioned EU Directive without establishing a branch, provided that the performance of such activities does not have the character of permanent economic activity.

## Article 10. Taxation

### 10.1 Tax System Overview

The current tax system in the Czech Republic was established in 1993. Taxes are divided into 3 basic groups – direct taxes, indirect taxes and other taxes. Direct taxes consist of (i) personal income and corporate income taxes governed by the Czech Income Taxes Act, of (ii) property taxes governed by the Czech Real Estate Tax Act and Act on Road Tax and (iii) transfer taxes governed by Czech Act on Inheritance Tax, Gift Tax and Real Estate Transfer Tax. Indirect taxes include (i) Value Added Tax governed by the Czech Act on VAT, of (ii) Excise Tax governed by the Czech Act on Excise Taxes, (iii) Customs Duties governed by the Czech Customs Duty Act and of (iv) Ecological Taxes, governed by a special Law on taxes from energy sources. Other taxes consist of mandatory contributions into the Czech social security and public health insurance systems, governed by a variety of Czech Laws, and municipality fees, usually governed by local by-laws.

The administration and collection of taxes and fees is governed by the new Tax Code, effective from 1 January 2011.

### 10.2 Corporate Income Tax

#### 10.2.1 General principles

Legal entities having their seat or place of management in the Czech Republic are considered as tax resident companies subject to worldwide taxation, including capital gains (unless exempted). Permanent establishments of foreign companies and branch offices of foreign companies constituting permanent establishments are generally taxed on Czech-source income only, and are subject to specific rules.

The tax base is generally calculated as the difference between income and expenses from Czech accounting books (accounting results), as adjusted for income tax purposes. The matching principle must be followed, i.e. all income and expenses should be properly accrued and/or deferred.

As of 1 January 2010, the standard corporate tax rate is 19%, with a reduced rate of 5% applicable to income from investment and pension funds. Investment income received by Czech companies from abroad creates a separate tax base that is taxed at 15%. The corporate tax rate is the same for both foreign and domestic investors.

The tax period is usually the calendar year, a fiscal year consisting of 12 successive calendar months, or other specific periods listed in the Income Taxes Act. In order to change the tax period from the calendar year to a fiscal year, the company must inform the relevant Tax Authority at least 3 months prior to the proposed starting date of its fiscal year.

There are no provisions for consolidated taxation, i.e. each company within a group subject to Czech taxation is obliged to submit a separate corporate income tax return (group taxation is allowed for VAT purposes only).

#### 10.2.2 Tax deductible items

Generally speaking, all expenses incurred to generate, secure and maintain taxable income, are considered as tax deductible items. Naturally, all documentation (invoices, receipts) must be properly kept to support tax deductibility. For tax audit purposes, a Czech translation of such documentation in foreign languages may be requested.

Typical tax deductible items especially include:

- (a) Operating expenses (e.g. rent, utilities, electricity, insurance)
- (b) Salary costs including social security and health insurance payments
- (c) Tax depreciation and tax net book value of sold assets
- (d) Tax deductible reserves and provisions
- (e) Interest (maybe subject also to special rules)
- (f) Royalties and management service fees

- (g) Exchange rate gains/losses in the year in which they arise

Typical tax non-deductible items include:

- (a) Entertainment expenses
- (b) Gifts and donations
- (c) Fees paid to members of company statutory and other bodies
- (d) Non-contractual fines and penalties
- (e) Accounting provisions and accounting reserves
- (f) Interest on credits and loans under thin capitalisation rules
- (g) Expenses related to non-taxable or/and tax exempt income

### 10.2.3 Tax depreciation

All assets valued at more than CZK 40,000 may be depreciated for income tax purposes, either under the linear or accelerated depreciation method. The accelerated method is based on a formula using the ratio of coefficients, which vary according to the category of the relevant asset. Once a method of depreciation is chosen, it must be applied over the entire life of the asset. For certain assets, a method of extraordinary depreciation can be applied, as of January 2009. Some assets (such as plots of land, artwork, acquired assets subject to gift tax, etc.) are not eligible for depreciation.

Tangible fixed assets are classified into the following depreciation groups:

Examples of fixed assets	Depreciation group	Minimum depreciation period (years)
Office appliances and computers	1	3
Machines, pumps, cooling/freezing equipment, accumulators, motor vehicles	2	5
Elevators, escalators, turbines, air conditioning equipment, electric motors and generators	3	10
Houses and buildings made from wood and plastic, long-distance transmission lines	4	20
Houses and buildings not made from wood or plastic, bridges, tunnels, other construction works (with the exception of buildings included in group 6 below)	5	30
Administrative buildings, department stores, historical buildings and hotels	6	50

Intangible fixed assets are generally depreciated on a linear basis over the period of time, for which the right to use the asset was granted. If no period was agreed, audiovisual work is depreciated over 18 months, software and intangible results of research and development over 36 months, establishment costs over 60 months, and other intangible fixed assets over 72 months. Goodwill acquired for a consideration is depreciated over 180 months (for tax purposes).

### 10.2.4 Capital gains (participation exemption)

Capital gains derived by Czech tax residents from the sale of shares and participations in EU tax resident subsidiaries are generally exempt from tax, if the conditions stipulated in the EU Parent-Subsidiary directive are fulfilled. A similar exemption applies to capital gains derived from the sale of a non-EU tax resident subsidiary, if (i) there exists a double tax treaty between the Czech Republic and the relevant non-EU country, (ii) the subsidiary has a specific legal form, (iii) complies with the conditions for the dividend

exemption under the EU Parent-Subsidiary directive, and (iv) is subject to home country corporate taxation similar to Czech corporate tax, of at least 12%.

Capital gains derived by Czech tax non-residents from the sale of shares and participations in Czech tax resident subsidiaries are generally subject to Czech corporate tax, unless a double tax treaty overriding Czech legislation provides otherwise.

#### 10.2.5 *Deductions from the tax base*

Donations to entities and government bodies based in the Czech Republic, other EU member states, Iceland or Norway, for the purpose of financing science, education, culture, sport, charity and recovery from natural disasters, and further, to individuals who operate schools or medical facilities, facilities for protection of abandoned animals or threatened species, are deductible up to 5% of the company's tax base, after deduction of other allowances (e.g., tax losses from the past tax periods, R&D allowance). Donations to universities and public research institutions can be deducted up to an additional 5%. The minimum value of a tax-deductible donation is CZK 2,000.

In addition to the deductibility of donations mentioned above, taxpayers are entitled to use a special tax allowance for certain costs incurred in relation to research and development projects. This provision is intended to encourage investment into research and development activities in the Czech Republic. Effectively this means that costs incurred for research and development may in fact be deducted from the tax base twice (as "normal" operating costs and then as extraordinary tax allowance, if properly recorded).

This deduction, if not used in the period in which it arises, may be carried forward and applied during the next 3 tax periods.

#### 10.2.6 *Tax losses*

Tax losses may be carried forward for maximum of 5 years. 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.

Losses can be neither carried back, nor offset against the profits of another group company.

#### 10.2.7 *Tax compliance*

Corporate tax returns must be filed within 3 calendar months after the end of the tax period. However, this deadline is automatically extended by an additional 3 calendar months if a power of attorney is granted by the company to a registered tax advisor/advocate to file its tax return. Moreover, this 3-month extension is automatically granted to all taxpayers who are subject to Czech statutory auditing (see the criteria in Article 5 above).

In some special cases, tax returns must also be filed after an accounting period that is not necessarily considered to be a tax period. In these cases, the filing deadline is shorter, usually one month, and may be extended only with the approval of the tax authority.

Corporate income tax must be paid within the deadline for filing the tax return. Tax prepayments may be required as from the second tax period of operations on semi-annual or quarterly basis, depending on the amount of last corporate tax liability.

### 10.3 **Withholding Taxes**

Withholding tax is generally levied on Czech source income paid abroad, unless a double tax treaty stipulates otherwise. As of 2009, tax residents in other EU/EEA states are entitled to file a tax return for the taxable period during which they have earned Czech source income subject to withholding tax and claim relevant expenses against this income, if more advantageous. Should the tax withheld at the source be higher than the final income tax liability, as declared in the tax return, a refundable tax overpayment will arise to a foreign company.

The standard withholding tax rate is 15%, with a reduced rate of 5% applicable to payments for financial leasing. As of 1 January 2013, the withholding tax of 35% to payments made to tax residents in offshore locations which have not concluded any double tax treaty or agreement on exchange of information in the area income tax matters with the Czech Republic.

### 10.3.1 *Dividends*

Dividends and profit share distributions paid to both resident and non-resident taxpayers are subject to a final withholding tax of 15%, unless a double tax treaty provides for a lower tax rate. Moreover, under the EU Parent-Subsidiary Directive, dividends paid by Czech tax resident companies to parent companies (as defined in the directive) located in other EU member states are exempt from withholding taxes (upon payment) and from corporate income tax (upon receipt), if the parent company holds at least 10% of the distributing subsidiary for an uninterrupted period of at least 12 months (this condition may be fulfilled also subsequently). Dividend distributions between 2 Czech tax resident companies are exempt from tax under similar conditions.

With effect from 1 January 2008, a similar tax exemption applies also to dividends received by a Czech tax resident parent company, or a permanent establishment of an EU company located in the Czech Republic, from non-EU tax resident subsidiaries, if (i) a double tax treaty exists between the Czech Republic and the relevant non-EU country, (ii) the subsidiary has a specific legal form, (iii) complies with the conditions for the dividend exemption under the EU Parent-Subsidiary directive and (iv) is subject to home country corporate taxation similar to Czech corporate tax of at least 12%.

Dividends and profit share distributions paid to tax residents in offshore locations which have not concluded any double tax treaty or agreement on exchange of information in the area income tax matters with the Czech Republic are subject to a final withholding tax of 35%.

### 10.3.2 *Interest*

Interest paid abroad is subject to 15% withholding tax, which can generally be reduced or eliminated by virtue of an applicable double taxation treaty, or exempt under the EU Interest and Royalties Directive. As mentioned above, EU/EEA tax residents receiving interest income are allowed to apply relevant expenses in their annual corporate tax return.

Interest paid to Czech tax residents is not subject to any withholding tax (with the exception of certain products offered by banks to private individuals). If the creditor is a taxpayer which is not obliged to keep accounting books, interest is a tax-deductible expense only if paid. For accounting purposes, interest must be accrued in accordance with the matching principle (i.e., all income and expenses should be properly accrued and deferred).

Interest paid to tax residents in offshore locations which have not concluded any double tax treaty or agreement on exchange of information in the area income tax matters with the Czech Republic are subject to a final withholding tax of 35%.

### 10.3.3 *Royalties*

Royalties paid abroad are subject to 15% withholding tax that can generally be reduced or eliminated by an applicable double taxation treaty, or as of January 2011, exempt under the EU Interest and Royalties Directive which was incorporated in Czech Income Taxes Act. As mentioned above, EU/EEA tax residents receiving income from royalties are allowed to apply relevant expenses in their annual corporate tax return.

The exemption of both royalties and interest income paid to EU/EEA tax residents from Czech tax (i.e. with no withholding tax) is applicable under the EU Interest and Royalties Directive if the following conditions are met:

- (a) The interest/royalty is paid to a company resident in another EU/EEA country listed in the appendix to the Interest Royalty Directive by a Czech joint-stock company, limited liability company, limited partnership, and unlimited partnership, co-operative or by a Czech permanent establishment of a foreign EU company.
- (b) Both the paying and receiving companies are directly related via capital (minimum share of 25%) for an uninterrupted period of at least 24 months. (This condition may be fulfilled also subsequently).
- (c) The recipient is the beneficial owner of the interest/royalty payment and the interest/royalty payments are not attributable to a Czech or third country permanent establishment.
- (d) Exemption of the interest/royalty income is subject to special approval by the Czech tax authorities, issued in the form of a decision.

Royalties paid to tax residents in offshore locations which have not concluded any double tax treaty or agreement on exchange of information in the area income tax matters with the Czech Republic are subject to a final withholding tax of 35%.

#### 10.3.4 *Thin Capitalisation*

Thin capitalisation rules apply in the Czech Republic on credits and loans provided between related parties (including 'back to back' debt financing loans) and may limit the tax deductibility of interest payments on debt finance from related parties and associated financial costs.

The applicable debt/equity ratio is 4:1 (6:1 if the debtor is a bank or an insurance company). Interest payments on the amount of related-party debt finance exceeding four (six) times the borrower's equity and the same portion of associated financial costs are tax non-deductible for the borrower. The interest exceeding the ratio may be further reclassified as a deemed distribution of dividends and taxed appropriately, if paid abroad to non-EU/EEA residents and if such taxation is permitted by the respective double tax treaty.

In addition, financial costs arising from credits and loans which are dependent on borrower's profits are generally tax non-deductible expenses.

#### 10.3.5 *Transfer pricing*

Contracted prices (terms) agreed between related parties must comply with the 'arm's length' principles for corporate tax purposes. If the prices agreed between related parties differ from prices that would be agreed between independent (non-related) parties in ordinary commercial transactions under the same or similar conditions, and such a difference is not properly documented, the tax authorities may adjust the tax base by the determined difference, and also invoke penalties. In applying "arm's length" principles, the Czech Republic generally adheres to the transfer pricing rules accepted by the OECD Transfer Pricing Guidelines.

The term "related parties" includes entities or individuals related by capital (direct or indirect relation by participation in share capital or voting rights of 25% or more), or otherwise (relation by means of management, control, or so-called "close" persons). Transfer pricing rules also apply to transactions between persons who have entered into a commercial relationship largely for the purpose of reducing their tax base or increasing their tax loss.

Based on written request of the taxpayer subject to transfer pricing rules, an advanced pricing agreement from the tax authorities may be obtained. The advanced pricing agreement provides the taxpayers with the possibility to check in advance whether the pricing policy agreed between group members (related entities) is compliant with the arm's length principle used.

#### 10.3.6 *Taxation of foreign entities*

A foreign entity is generally subject to Czech tax on income generated in the Czech Republic. The extent to which a foreign entity is subject to Czech tax is determined by the type of activities carried out in, or related to, the Czech Republic. A foreign entity can be subject to taxation by establishing a branch office (creating "permanent establishment") or via withholding tax on Czech-source income (see above).

The taxation of operating profits of a branch office (constituting a permanent establishment for corporate income tax purposes) is similar to the taxation of profits of a business company, both being taxed on the accounting profit and loss basis, as adjusted for tax purposes by tax non-deductible or/and non-taxable items (following the same tax rules). The tax base is subject to the standard corporate income tax rate of 19%, as of 2010.

As opposed to company taxation, a branch office (constituting a permanent establishment) may apply for an alternative method of taxation (e.g., percentage of total revenues or incurred costs) which is usually simpler from the administrative point of view, and may also result in lower corporate tax liability. However, this typically applies in situations where there are objective obstacles in determining the tax base of the permanent establishment (e.g. due to the impossibility to attribute profits to the permanent establishment). The tax authorities are though not obliged to accept the alternative method of taxation as proposed by the permanent establishment.

A branch office which does not constitute permanent establishment in the Czech Republic is technically not subject to Czech taxation (nevertheless each particular case must be reviewed very carefully, as the existence of the branch office without simultaneous permanent establishment does not commonly occur).

#### 10.3.7 *Permanent establishment (PE)*

"Permanent establishment" means a taxable presence of a foreign entity in the Czech Republic (not though necessarily a legal entity or branch office). It is usually created through (i) existence of a fixed place of business in the territory of the Czech Republic (e.g. an office, workshop, mine, building site), or (ii) based on provision of services (if employees of a foreign company or individuals working in other capacity for the foreign company provide management, consulting or similar services to a Czech entity, and their presence

during the provision of such services in the Czech Republic exceeds 6 months in any 12-month period of time), or (iii) through the activities of a dependant agent, entitled to conclude agreements on behalf of a foreign, non-resident company. The above applies unless an applicable double tax treaty overriding Czech legislation stipulates otherwise.

#### 10.3.8 *Securing tax*

A Czech individual or entity may be required to secure tax from payments made to foreign non-EU/EEA taxpayers receiving Czech-source income (e.g. income derived through a permanent establishment).

When paying, transferring or crediting an amount to a foreign non-EU/EEA entity, the Czech taxpayer must withhold 10% from income derived from sources in the Czech Republic (as defined by the Czech Income Taxes Act) and 1% from sales of investment instruments and from the repayment of receivables assigned to a foreign entity. Further, securing tax corresponding to the personal or corporate tax rate, as appropriate, should be withheld from income attributable to the general partners of a general or limited partnership.

The amount of secured tax is treated as an advance tax payment of the foreign entity, and may be credited against the final corporate income tax liability as declared in its annual corporate tax return.

#### 10.4 **Double-Taxation Relief and Tax Treaties**

Generally, foreign tax relief is available under relevant double tax treaty provisions. Czech Republic has a broad double tax treaty network; currently 80 double tax treaties are in force. The table below lists the countries with which the Czech Republic has valid double tax treaty, as well as the withholding tax rates applicable to dividend, interest and royalty payments made by a Czech tax resident company to foreign recipients (unless the EU Interest and Royalties rules overriding the double tax treaty provisions apply).

##### 10.4.1 *Table – applicable double tax treaties*

<b>Withholding tax rates under the Czech Republic's tax treaties (%)</b>			
<b>Country</b>	<b>Dividends*</b>	<b>Interests**</b>	<b>Royalties***</b>
Albania	15 / 5	5	10
Armenia	10	10	10(i) / 5(c)
Australia	15 / 5	10	10
Austria	10 / 0	0	0 (c)
Azerbaijan	8	10	10
Bahrain	5	0	10
Barbados	15 / 5	5	10 / 5(c)
Belarus	10	5	10
Belgium	15 / 5	10	10(ot) / 5(re) / 0(c)
Bosnia and Herzegovina	5	0	10
Brazil	15	15	25(tm) / 15
Bulgaria	10	10	10
Canada	15 / 5	10	10 / 0(c)
China	10	10	10
Croatia	5	0	10

Cyprus	5 / 0	0	10(i) / 0(c)
Denmark	15 / 0	0	10 / 0(c)
Democratic Republic of Korea	10	10	10
Egypt	15 / 5	15	15
Estonia	15 / 5	10	10
Ethiopia	10	10	10
Finland	15 / 5	0	10(i) / 5(op) / 1(fl) / 0(c)
France	10 / 0	0	10(i) / 5(re) / 0(c)
Georgia	10 / 5	8	10(tm) / 5(i) / 0(c)
Germany	15 / 5	0	5
Greece	38-47	10	10 / 0(c)
Hong Kong	5	0	10
Hungary	15 / 5	0	10
Iceland	15 / 5	0	10
India	10	10	10
Indonesia	15 / 10	12,5	12,5
Ireland	15 / 5	0	10
Israel	15 / 5	10	5
Italy	15	0	5 / 0(c)
Japan	15 / 10	10	10 / 0(c)
Jordan	10	10	10
Kazakhstan	10	10	10
Korea	5/10	10	10 / 0(c)
Kuwait	5 / 0	0	10
Latvia	15 / 5	10	10
Lebanon	5	0	10(c) / 5 (i)
Lithuania	15 / 5	10	10
Luxembourg	15 / 5	0	10 / 0(c)
Macedonia	15 / 5	0	10
Malaysia	10	12	12
Malta	5	0	5

Mexico	10	10	10
Moldova	15 / 5	5	10
Mongolia	10	10	10
Montenegro	10	10	10(i) / 5(c)
Morocco	10	10	10
Netherlands	10 / 0	0	5
New Zealand	15	10	10
Nigeria	15 / 12,5	15	15
Norway	15 / 0	0	10(tm) / 5(i) / 0(c)
Philippines	15 / 10	10	15(c) / 10
Poland	5	5	10
Portugal	15 / 10	10	10
Romania	10	7	10
Russia	10	0	10
Serbia	10	10	10(i) / 5(c)
Singapore	5	0	10
Slovakia	15 / 5	0	10
Slovenia	15 / 5	5	10
South Africa	15 / 5	0	10
Spain	15 / 5	0	5 / 0(c)
Sri Lanka	15	10	10 / 0(c)
Sweden	10 / 0	0	5 / 0(c)
Switzerland	15 / 5	0	10 / 5
Syria	10	10	12
Tajikistan	5	7	10
Thailand	10	10	15(ot) / 10(i) / 5(c)
Tunisia	15 / 10	12	15(i) / 5(c) / 5(ts)
Turkey	10	10	10
Ukraine	15 / 5	5	10
United Arab Emirates	5	0	10
United Kingdom	15 / 5	0	10 / 0(c)

United States	15 / 5	0	10 / 0(c)
Uzbekistan	10 / 5	5	10
Venezuela	10 / 5	10	12
Vietnam	10	10	10

*\*lower rate applies, if a certain percentage of the share is owned, the percentage differs treaty by treaty*

*\*\*interests paid on government loans provided by one of the contracting states are frequently exempt from withholding tax*

*\*\*\*some double tax treaties recognise different rates for specific type of royalty payment: cultural (c); industrial (i); financial leasing (fl); operational (op); rent of equipment (re); trademarks (tm); technical services (ts); other (ot)*

## 10.5 Personal Income Tax

### 10.5.1 General principles

The scope of taxation depends on the tax residency status of the individual. Czech tax residents are generally taxable on their worldwide income, while Czech tax non-residents are generally taxable on their Czech-source income only.

For tax purposes, an individual is a Czech tax resident if he/she has permanent residence in the Czech Republic (i.e., a place of permanent residence under circumstances indicating his/her intention to dwell there permanently) and/or if he/she is present in the Czech Republic for 183 or more calendar days during a calendar year (including partial days). If the individual is considered resident in more than one country, the applicable double tax treaty should determine the final tax residency status of the individual. Most double tax treaties define an individual as a Czech tax resident based on the following criteria that should be evaluated in turn: available home in the Czech Republic, centre of vital interests and closer personal and economic connections to the Czech Republic, habitual place of residence in the Czech Republic and Czech citizenship.

A flat personal income tax rate of 15% applies to all types of taxable personal income. As from 1 January 2013, the "solidarity surcharge" of 7% on income from dependent activity (i.e. employment income) and on the income from business (entrepreneurial) activity under has been introduced for the tax periods from 2013 until 2015. The solidarity surcharge tax applies to gross employment income (or partial tax base in case of income from business) that is in excess of CZK 1,242,432 per year (after deduction of real costs or flat rate costs).

The taxable period for individuals is the calendar year.

There is currently no special tax regime available for expatriates.

### 10.5.2 Taxable income and tax base

Czech tax legislation recognises 5 basic types of income: employment income, entrepreneurial income (income earned by self-employed persons), investment income (dividends, interests), income from the lease of movable and immovable property and other income (e.g. capital gains).

Each of the above types of income constitutes a separate partial tax base, which must be aggregated in order to calculate the total annual tax base. Generally, each partial tax base is calculated as the difference between gross income and related expenses, with exception of employment income from which no expenses can be deducted. Further, the partial tax base from employment includes gross taxable employment income, plus the part of mandatory social security/health insurance payments paid by the employer (either an actual Czech employer or which would be paid by a Czech employer) at the rate of 34% of the gross salary, up to the annual cap for calculating health insurance.

The annual tax base does not include Czech-source income subject to final withholding tax at source, e.g. Czech sourced dividends and profit-sharing distributions and interest from private bank accounts. Losses arising from one type of income (if applicable), may under certain conditions be offset against other types of income, with the exception of employment income. In other words, it is not possible to offset loss from self-employment, investments, rent and other capital losses against employment income.

Unused losses achieved from either self-employment income or the income from the lease of movable and immovable property may be carried forward for a maximum of 5 following years.

#### 10.5.3 *Tax exemptions*

Czech tax legislation provides for a variety of tax exemptions, mainly on gains from sales of personal property (not included in one's business property) if owned by the seller for a longer period of time than specified by the law. Typically, gains from the sale of a dwelling (flat or house) are exempt from income tax if the seller resided in the dwelling for at least 2 years immediately preceding the sale; gains from the sale of other real estate are exempt if owned longer than 5 years. Gains from the sale of securities are exempt if the 6-month holding test is fulfilled (applies only in case the total share in equity and voting rights in the company did not exceed 5% during the 24 months before the sale of shares); otherwise in order to exempt gain from sale of securities or business shares in other companies, a 5-year holding test must be fulfilled. The sale of cars, ships and planes is exempt from taxation if owned by the seller for more than one year.

In addition to above mentioned tax exemptions of capital gains, Czech tax legislation provides for specific tax exemptions applicable to certain employment benefits provided as benefits in-kind, for example education of employees, catering and non-alcoholic drinks, free use of certain recreational, healthcare, school, sport and cultural facilities, and others.

#### 10.5.4 *Personal tax deductions*

The following deductions from taxable income of an individual apply or may apply:

- (a) General tax allowance of CZK 24,840 (as of 2013 does not apply in case of working pensioners receiving old age pension)
- (b) Dependent spouse tax allowance of CZK 24,840 (if the spouse lives with the taxpayer and does not earn income in excess of CZK 68,000)
- (c) Disability tax allowance of CZK 2,520/5,040/16,140 depending on level of disability
- (d) Student tax allowance of CZK 4,020

Further, a taxpayer may reduce the final tax liability by CZK 13,404 annually per dependent child. If the total tax is lower than the respective child allowance, the taxpayer is entitled to receive special tax bonus equal to the difference between the child allowance and the tax liability, up to a maximum amount of CZK 60,300 per annum.

Donations to entities and government bodies based in the Czech Republic, other EU member states, Iceland or Norway for the purpose of financing science, education, culture, sport, charity and recovery from natural disasters, and further to individuals who operate schools or medical facilities, facilities for protection of abandoned animals or threatened species, are deductible up to 10% of the individual's tax base, after deduction of other allowances (e.g. tax losses). The minimum value of a tax-deductible donation is CZK 1,000 or 2% of the individual's tax base.

Under specific conditions, an individual's tax base can be further reduced by the annual amount of paid mortgage interest from loans to finance housing needs, private life insurance contributions and supplementary pension insurance premiums. Limits for those deductions as stipulated by Czech legislation must be observed carefully.

As of 2013, self-employed individuals or individuals receiving income from rent of property and claiming lump sum cost deduction against taxable income may be limited in applying personal tax deductions for the spouse and children, if the sum of their partial tax bases from self-employment and/or rental activities exceeds 50% of the total tax base.

#### 10.5.5 *Personal income tax return*

The following individuals are required to file a Czech income tax return. Generally, such individuals may be required to make advance payments on their future income tax liability:

- (a) All expatriates assigned to the Czech Republic by a foreign employer with a service permanent establishment in the Czech Republic (not registered as payroll tax withholding agent)
- (b) All individuals earning other types of Czech sourced taxable income exceeding CZK 6,000 per annum in addition to employment income

- (c) All individuals subject to solidarity surcharge tax
- (d) All self-employed persons (entrepreneurs)

Personal tax returns must be filed and the income tax must be paid within 3 months after the end of the tax period. However, the said deadline is automatically extended by an additional 3 months if a power of attorney granted by the taxpayer to a registered tax advisor/advocate to file its tax return is submitted at the tax authority within 3 months after the end of the tax period.

Generally, individuals with an annual income tax liability of at least CZK 30,000 are obliged to pay quarterly or semi-annual tax advances in respect of their future income tax liability. The amounts and frequency depend on the previous year's tax liability. Individuals earning income from one or more successive employments only (that is, subject to monthly payroll tax withholdings made by the employer on behalf of the individual) are not obliged to pay tax advances by themselves.

#### 10.5.6 Payroll tax

All employees of Czech companies and Czech branches of foreign companies registered in the Commercial Register (including expatriates assigned to work at the branch) and economic employees hired by a Czech company based on international hire out of labour scenario are subject to monthly payroll tax withholdings made by the company/branch office/economic employer from their taxable remuneration. Unless they earn any other income subject to Czech taxation, they should generally meet their Czech income tax obligations from employment income by means monthly payroll tax withholding, and annual tax reconciliation carried out by the employer. Payroll tax is withheld at source by the employer from the salary of the employee and subsequently paid to the appropriate tax authority. The employer is obliged to run payroll records and is responsible for tax registration and for correct calculation and payment of tax. Payroll tax withholding rules in respect of the solidarity surcharge tax apply in a similar way.

#### 10.6 Social Security and Health Insurance

Individuals subject to Czech social security and public health insurance systems (typically employees having employment contract concluded with Czech employer or/and foreign employees assigned from abroad who fall under Czech systems based on either EU Regulation on social security, or other international agreement on social security coverage) must mandatorily participate in the state social security system and public health insurance system. Such employees, along with their employer, pay social security (including old-age pension, sickness and unemployment insurance) and health insurance contributions calculated as a percentage of an assessment base, which is deducted by the employer from their salary.

The assessment base is usually equal to the total employment income which is subject to personal income tax and is not concurrently exempt from such tax, and which has been accounted for by the employer for the benefit of the employee. The income accounted for by the employer for the benefit of the employee means any benefit provided by the employer to the employee in monetary or non-monetary form, or in the form of an advantage, eventually credited to an employee, or it rests in any other form of performance provided by the employer on behalf of the employee.

The maximum assessment base must be observed by the employer while running payroll records. The maximum assessment base equals to 48 times the amount of the average wage for social security. As regards the public health insurance, the existing 72 times the amount of the average wage for application of maximum assessment base has been cancelled for the period from 2013 until 2015. Once the employee reaches the maximum assessment base, neither he/she, nor the employer, are further obliged to pay social security in that particular year. The decisive period is the calendar year, and the total assessment base is calculated on the amount of the monthly assessment bases.

The maximum assessment base for 2013 amounts to **CZK 1,242,432 (approx. EUR 49,700)** for social security. The aggregate insurance rates applicable in 2013 are 34% for the employer (25% social security and 9% health insurance) and 11% for the individual (6,5% social security and 4,5% health insurance).

The total payments of social security and health insurance (both the employee's and employer's portion) are to be transferred to the relevant social security authorities and health insurance companies no later than on the 20<sup>th</sup> day of the calendar month following the month for which the contributions are paid.

With respect to social security and health insurance contributions, all responsibilities remain with the employer, while employees generally have no obligations.

Self-employed persons subject to Czech social security and health insurance systems contribute by themselves, and the amounts of contributions are calculated from the assessment base, corresponding to their tax base determined from their entrepreneurial income.

In addition to state mandatory social security and health insurance systems, new legislation on pension reforms introduced additional pension systems for individuals subject to Czech mandatory social security system, also referred to as “the first pillar”. The second pillar of Czech pension system, also called “savings for old age pension”, allows individuals who are participants of the general mandatory system to voluntarily apply for and participate in the second pillar until reaching old age pension. The extra contributions for future pension are collected at a rate of 5% (from which 3% is taken out of the mandatory system and 2% is added by the individual) and are remitted and administered by selected private pension institutions. The third pillar of the pension system, also referred to as “supplementary pension savings”, replaces the existing supplementary pension insurance with state contributions and is a completely voluntary system for all individuals older than 18 years.

## 10.7 Value Added Tax

### 10.7.1 General principles

The Czech VAT Act follows the general principles of the EU VAT Directive (a recast of the Sixth VAT Directive).

Czech VAT is generally charged on supplies of most goods and provision of services at a standard rate of 21%. A reduced rate of 15% applies to certain supplies, including the following: pharmaceuticals, printed materials in which advertisements do not exceed 50%, medical goods, aids for the disabled, buildings for residential living (with some exceptions), work on medical goods, supplies of water, medical care, social care, care for children, elderly, sick and disabled persons.

VAT law explicitly provides for VAT-exempt supplies without the possibility to refund VAT incurred in connection with provision of such supplies. The VAT-exempt supplies are typically services of financial institutions, postal services, services rendered by insurance companies, radio and television broadcasting, the lease of land and/or building (unless the lessor opts to charge VAT under specific conditions), lotteries and other games of chance, health care services, social welfare and educational services.

VAT payers may ask the Czech Ministry of Finance for a binding ruling as to whether a VAT rate proposed by a tax payer for a particular supply of goods or services is in compliance with legislation. The fee for such a request is CZK 10,000.

As of January 2010, most cross-border services rendered between 2 VAT liable entrepreneurs are subject to the reverse charge mechanism. This means that the obligation to charge VAT is transferred to recipient of the service and applies in the country in which the recipient is registered. Exceptions from this general rule may apply and must be carefully reviewed on a case-by-case basis.

Furthermore, as of January 2012, a local reverse charge mechanism is applicable between in Czech Republic VAT registered entities in respect of the following supplies: supplies of gold, emission allowances, and construction and assembly services.

### 10.7.2 Registration duty

Czech entities or EU/other foreign entities having a registered office, place of business or fixed establishment in the Czech Republic are considered as a Czech entity for VAT purposes.

Czech entities (or Czech self-employed individuals) must register for VAT if the turnover for rendered taxable supplies exceeds CZK 1,000,000 within any 12 consecutive calendar months. The registration application must be submitted within 15 days after the month during which the turnover was exceeded. Registration with immediate effect may also be required due to Intra-Community Trade.

Czech entities (or Czech self-employed individuals) carrying out taxable activities and not reaching the decisive turnover for obligatory VAT registration are allowed to register for VAT voluntarily.

Czech entities (or Czech self-employed individuals) which do not qualify for obligatory VAT payer, because their turnover for rendered taxable supplies does not exceed CZK 1,000,000 within any 12 consecutive calendar months, and which purchase goods and services from persons having seats in other EU member states or provide services to another EU member states must register as an identified person for VAT purposes having limited compliance duties with respect to Czech tax authorities.

Foreign and EU 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. There is no VAT registration threshold for these entities or individuals, i.e. in such case VAT registration is obligatory if a taxable supply of any value is rendered. They can also register voluntarily.

Group VAT registration, introduced as of January 2008, enables registration of a group of related companies under one VAT identification number. For VAT purposes, such a group is treated as a single VAT payer, and supplies between the group companies are generally not subject to VAT.

#### 10.7.3 *VAT recovery*

Generally, VAT incurred by a VAT payer (i.e. registered entity or individual) for the purpose of performing its own economic activities can be recovered. Input VAT incurred solely in relation to VAT exempt supplies cannot be recovered. Every VAT payer should allocate its purchases to one of the following 3 categories of taxable supplies: (i) purchases associated with full VAT recovery entitlement, i.e. used fully for economic activities subject to Czech VAT and/or to specific supplies outside the scope of Czech VAT or/and to certain VAT-exempt supplies allowing full VAT recovery, (ii) purchases associated with partial VAT recovery entitlement, i.e. used partially for economic activities subject to Czech VAT or/and to specific supplies outside the scope of Czech VAT or/and to certain VAT-exempt supplies allowing full VAT recovery, and (iii) purchases with no VAT recovery entitlement, i.e. used to provide the majority of VAT exempt supplies. Subsequently, in accordance with the mentioned allocation, the VAT payer must reduce the VAT recovery entitlement by means of the VAT return.

An adjustment of VAT recovery is required in respect of certain purchased long-term assets (both tangible and intangible) in respect of which the purpose of usage is changed. In both cases, complex rules apply to the adjustment process over a 5-year period (10-year period for real estate).

VAT incurred on items used for entertainment purposes is not recoverable.

#### 10.7.4 *VAT refund*

EU companies registered for VAT in other EU member states are entitled to a refund of Czech VAT. These companies must file an application electronically through the web-portal in their home country.

Non-EU businesses can, in certain circumstances, obtain a refund of Czech VAT incurred on goods and services. The refund will only be made on the basis of reciprocity (currently applicable to entities from Norway, Macedonia and Switzerland only).

#### 10.7.5 *VAT compliance*

Registered Czech VAT payers (both Czech and foreign entrepreneurs) are obliged to file VAT returns on a monthly basis if their annual turnover exceeds CZK 10 million or if they are newly registered for VAT in the Czech Republic, or on a quarterly basis if their annual turnover is less than CZK 10 million and relevant notification (upon change of the VAT period) is submitted by the end of January of the following calendar year; however the change to quarterly VAT period cannot be used by newly registered VAT payers during the first 2 calendar years of their registration. VAT returns must be filed and any VAT liability must be paid within 25 days after the end of the taxable period (i.e. calendar month of quarter) at the latest.

Excess VAT recovery is refunded automatically by the tax authorities within 30 days of being assessed (if no VAT inspection/audit occurs).

In addition to the VAT returns, VAT payers involved in intra-Community trade must file an EC Sales List, providing details of sales of goods and services to VAT payers in other EU countries. The EC Sales List should generally be filed within the same filing deadlines which apply to VAT returns. In addition, entities effecting or receiving taxable supplies subject to the local reverse charge mechanism are obliged to submit a special evidential record.

VAT payers must also file a monthly Intrastat report providing details of goods sold/relocated to and from other EU countries. The threshold for filing is CZK 8 million for arriving transactions and CZK 8 million for dispatched transactions. The Intrastat reports must be filed to the Customs Office on a monthly basis.

VAT returns can be filed both electronically and in paper form, EC Sales Lists and Intrastat reports may only be filed electronically.

#### 10.8 **Excise Taxes**

Excise taxes are imposed on entities producing or importing certain types of goods, including fuels and lubricants, alcohol and spirits, and tobacco products. The tax is generally based on quantity of goods sold/imported, expressed in specific units.

## 10.9 **Transfer Taxes**

### 10.9.1 *Real estate transfer tax*

Real estate transfer tax is levied on the sale or transfer of real estate. The tax rate is 4% and is levied on either the purchase price or an expert valuation, whichever is higher. The tax is payable by the seller, while the purchaser serves as guarantor.

### 10.9.2 *Gift tax*

Gifts between individuals or legal entities are subject to gift tax. This tax is levied on the value of the property donated, minus pertaining debts and other liabilities.

The recipient is normally the taxpayer, unless the gift is given abroad, in which case the giver is the taxpayer.

There is a general tax exemption applicable for persons in Group I (parents, children, spouses) and Group II (siblings, aunts, uncles, nephews, nieces, etc.).

The gift tax rate is the double the applicable rate of inheritance tax; the progressive rates range from 7% to 40%, depending on the value of the property.

### 10.9.3 *Inheritance tax*

Inheritance tax is levied on immovable and movable property in the Czech Republic, regardless of the nationality and residence of the devisor. Where the deceased person was a Czech national, inheritance tax applies even to movable property located abroad.

The same general tax exemption as in case of gift tax applies. The tax is levied on a scale of progressive rates ranging from 3.5% to 20% depending on the value of property.

## 10.10 **Property Taxes**

### 10.10.1 *Road tax*

Generally, all vehicles used for business purposes in the Czech Republic are subject to Czech road tax. 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.

### 10.10.2 *Real estate tax*

Real estate tax is generally payable by every owner of land or buildings located in the Czech Republic. Generally, 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.

The tax base for land depends on the area of land occupied (residential land) or price of land (agricultural land). The tax on buildings depends on the size and number of above-ground floors of the building. Yearly rates range from (i) CZK 0.20 to CZK 2 per square meter in case of residential land or from (ii) 0.25% to 0.75% multiplied by the area in square meters and the average price of land in case of agricultural land, and/or from (iii) CZK 2 to CZK 10 per built-up square meter in case of buildings are multiplied by a coefficient from one to 5, depending on the location of the property (for example, the yearly real estate tax for a 100 square meter apartment in Prague without parking space and land would be CZK 1,200).

A real estate tax return generally 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), occurred since the previous year.

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