

**Baker
McKenzie.**

Doing Business in the Czech Republic

2019



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Preface

Baker McKenzie is one of the world's largest law firms, with a presence in 78 locations in 46 countries. We have been active in the Czech Republic since 1993 and our work includes a full range of legal and tax services directed primarily to foreign investors doing business in the Czech Republic, but also, increasingly, to large, domestic Czech companies, especially as they seek to expand into new markets.

The Czech Republic formally joined the European Union on May 1, 2004. Since then it has adopted new laws in virtually every area of regulation and its legal system continues to develop in line with European norms.

Doing Business in the Czech Republic has been prepared by the Prague office of Baker McKenzie as a general guide for those companies or persons wishing to engage in business activities or invest in the Czech Republic.

The information contained in this publication is general in nature and is intended only to provide an introduction to the Czech legal system and investment climate. This publication may not be relied upon in relation to any transaction or investment decision and it should not be viewed as a substitute for specific legal and tax advice. In addition, readers should be aware that the law and its interpretation are constantly changing in the Czech Republic; as such, the information contained in this publication may quickly become outdated.

We would be pleased to provide you with updates on the material contained in this guide, or to provide you with further information regarding a specific industry or area of Czech law in which you have a particular interest.

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The Czech Republic

Key Facts

Area	78,866 km ²
Population	10.6 million (approx.)
Capital	Prague
Language	Czech
Currency	Czech Koruna (CZK)

The Czech Republic is located in the heart of Europe, neighboring Germany (to the west), Poland (to the north), Slovakia (to the east), and Austria (to the south). The country is comprised of three historically defined regions: Bohemia, Moravia and Silesia. It has a population of approximately 10.6 million, which is comparable to other medium-sized European nations (e.g. Hungary, Austria). Approximately one fourth of the population lives in the five largest cities: Prague, Brno, Ostrava, Plzen and Liberec. The capital city, Prague, has approximately 1.3 million inhabitants. Prague has historically been regarded as the “geographic center” of Europe. Its cobblestone streets form a maze of cozy restaurants, shops, galleries and bars. Prague has excellent conference facilities, hotels with the latest business services and an economy that makes doing business here advantageous.

The Czech Republic is a parliamentary republic. The National Legislature consists of two houses: the lower house, the Chamber of Deputies, which has 200 members and the upper house, the Senate, which has 81 members. The electoral system declares universal direct suffrage for party proportional representation, subject to a 5% threshold. The Czech Republic is divided into 14 regions (Higher Territorial Self-Governing Units – *Vyšší územní samosprávné celky* - VÚSC in Czech), which came into effect on 1 January 2000. The regions are further subdivided into 205 Districts of the Municipalities with Extended Authority (*Správní obvody obcí s rozšířenou působností* in Czech). Selected competencies have been transferred from the central government to self-governing regional councils.

Czech history has always been interwoven with the history of Europe. Prior to World War I it was an integral part of the Habsburg Empire. In 1918, after the defeat of the Austrian-Hungarian Empire, several centuries of Habsburg rule came to an end with the birth of independent Czechoslovakia, uniting the Czechs and Slovaks in a one nation-state. During the inter-war years, the First Republic (as it is referred to) was a rapidly developing industrial society, with a stable democratic system of governance and a vibrant cultural and intellectual life. However, the Munich Agreement, signed in October 1938, essentially sealed Czechoslovakia’s fate and led to its occupation by Nazi Germany in March 1939. At the end of the war, Czechoslovakia fell into the *de facto* sphere of Soviet influence. From 1948, the Communist Party took full control of the state and Soviet dominance extended for the next 40 years. In 1989, the Soviet empire in Europe began to crumble, and on 17 November communism in the Czech lands gave way to the popular and peaceful demonstrations known as the Velvet Revolution. In 1993, Czechoslovakia underwent a “velvet divorce” and peacefully dissolved into the Czech and Slovak Republics.

Although not without setbacks, the Czech Republic has made great progress in its transition to a pluralistic, democratic and market-oriented society. The country boasts a highly skilled and educated workforce and foreign direct investment has increased each year, especially since the introduction of large-scale investment incentives by the Czech government in 1998, enacted into law by Act No. 72/2000 Coll. The Czech Republic became a member of the European Union on 1 May 2004 and currently has one of the lowest unemployment rates in Europe.

Political and Economic Stability

The Czech Republic is a parliamentary democracy and one of the most advanced CEE countries. Economic policy is consistent and predictable. An independent central bank (the Czech National Bank) has maintained a high degree of currency stability since 1991.

Czech legislation is in accordance with the regulations of the European Union. Czech commercial, accounting and bankruptcy laws are compatible with Western standards. Under Czech law, foreign and domestic entities are treated identically in all areas, from protection of property rights to investment incentives. The government does not screen any foreign investment projects with the exception of those in the defence and banking sectors. The Czech Republic is committed to non-discrimination against foreign investors in privatization sales, with the same aforementioned exceptions.

The Czech koruna is fully convertible. All international transfers (e.g. profits and royalties) related to an investment can be carried out freely and without delay.

The Czech Republic was the first CEE country to be admitted into the OECD. The country is a member of NATO and is fully integrated into other international organizations such as the EBRD, WTO and IMF.

Investment Protection

The Czech Republic is a member of the Multilateral Investment Guarantee Agency (MIGA), an international organization for the protection of investment, belonging to the World Bank-IMF group. The country has signed a number of bilateral international treaties which support and protect foreign investments, for example, with Australia, Austria, Belgium, Canada, China, Finland, France, Germany, Luxembourg, Mexico, the Netherlands, Norway, Poland, Spain, Sweden, Switzerland, Turkey, the UK and the US.

Protection of Property Rights

The Czech Republic is a signatory to the Bern, Paris, and Universal Copyright Conventions. Existing legislation guarantees the protection of all forms of property, including patents, copyrights, trademarks and semiconductor chip layout design. Trademark law and copyright law are compatible with EU directives.

The only case where the property of a foreign person or entity could be expropriated in the Czech Republic would be on public interest grounds that could not be satisfied by any other means, which would then have to be implemented through an Act of Parliament and with full compensation at market value.

Repatriation of Profits

No limitations exist concerning the distribution and expatriation of profits by Czech subsidiaries to their foreign parent companies, other than the obligation of joint stock and limited liability companies to pay withholding taxes.

The Czech Republic has treaties to prevent double taxation with a number of countries, including all EU countries, Australia, Canada, Japan, Switzerland and the United States.

Double taxation treaties cover taxes on dividends, interests and royalties. The actual rates of withholding tax are determined by the treaty and range from 0 to 15 per cent.

1. Corporate Registration and Compliance

1.1 Transition to New Corporate Regulation

In 2012 the Czech Parliament adopted a new Act on Business Corporations and a new Civil Code, which became effective on 1 January 2014 and which have replaced the previous Commercial Code and Civil Code. The adoption of this new legislation is the most significant change to Czech business companies legislation since the adoption of the Commercial Code in 1991, affecting all companies operating pursuant to Czech law. Aligned with the Act on Business Corporations and the new Civil Code, other accompanying regulations have also been adopted (including new regulation on registration into the Commercial Register).

The new Act on Business Corporations applies in full to business companies established after 1 January 2014. Business companies existing before this date were obligated to amend their constituent documents in compliance with the new legislation in the extent as stipulated by the Act on Business Corporations and file the amended constituent documents with the Collection of Deeds of the relevant Commercial Register by 30 June 2014.

Additionally, business companies existing before 1 January 2014 were able to decide, by 1 January 2016, whether they would submit to the regime set forth by the Act on Business Corporations as a whole and register such submission in the Commercial Register. In such cases, business companies have subsequently been regulated solely by the Act on Business Corporations. With respect to those business companies existing before 1 January 2014 which did not submit to the regime set forth by the Act on Business Corporations as a whole, the provisions of the Commercial Code still apply, to the extent regulating rights and duties of the participants (shareholders) which do not contravene the mandatory provisions of the new Act on Business Corporations, or if the participants (shareholders) did not deviate from such provisions of the Commercial Code in the constituent documents.

Although the above deadline has already passed, most of the legal community are inclined to believe that the above is not a foreclosure period and that therefore companies that haven't so far submitted to the new regime may do so even after this deadline.

In connection with the transition to the new legislation, it was also obligatory to adapt the agreements on performance of office to the new legislation by 30 June 2014; otherwise, performance of office has been, in principal, free of charge since 1 July 2014.

1.2 Forms of Business Vehicles

The Czech Act on Business Corporations and the new Civil Code recognize a variety of legal entities and forms of business vehicles (some of which, such as a branch office, are not legal entities) under which it is possible to do business in the Czech Republic.

The legally recognized entities or registered forms of business vehicles that are typically utilized and encountered by foreign investors are:

- (i) Limited liability company (commonly referred to as "s.r.o." or a "spol. s r.o.") (*společnost s ručením omezeným*);
- (ii) Joint stock company (commonly referred to as "a.s." or an "akc. spol.") (*akciová společnost*);
- (iii) Limited commercial partnership (commonly referred to as "k. s." or a "kom. spol.") (*komanditní společnost*);

- (iv) General commercial partnership (commonly referred to as "v. o. s." or a "veř. obch. spol.") (*veřejná obchodní společnost*);
- (v) Branch office (*pobočka* or, if registered in the Commercial Register, *odštěpný závod*);
- (vi) Cooperative (*družstvo*);
- (vii) European company (*evropská společnost*);
- (viii) European economic interest grouping (*evropské hospodářské zájmové sdružení*);
- (ix) European cooperative company (*evropská družstevní společnost*); and
- (x) Sole entrepreneur (*fyzická osoba - podnikatel*).

Some of the above vehicles need to be registered in the Commercial Register.

Specific acts may also enable other business vehicles which are based on the above common forms and which purport to facilitate business in a particular area. A typical example is a joint stock company with a variable share capital (*akciová společnost s proměnným základním kapitálem*) or a limited commercial partnership with investment certificates (*komanditní společnost na investiční listy*), both regulated by Act No. 240/2013 Coll., on investment companies and investment funds.

In addition, Czech law provides for the possibility of establishing associations (*spolek*). Such associations are legal entities and need to be registered. The principal activity of associations, however, cannot be to operate entrepreneurial or other gainful activities - such entrepreneurial or other gainful activities can be performed by associations as an ancillary activity.

1.2.1 Limited Liability Company

The principal features of a limited liability company are:

- (i) Constituent Documentation. A limited liability company can be formed on the basis of a constituent document, which is a memorandum of association (*společenská smlouva*) if the company has more than one participant, or a founding deed (*zakladatelská listina*) if the company has only one participant. In both cases, the constituent document must be drawn up in the form of a notarial deed. The Act on Business Corporations stipulates requirements on the minimum content of the constituent document;
- (ii) No Shares. No shares are issued to the participants; rather, the participants acquire a participation interest (also referred to as a quota or ownership interest) in the limited liability company. However, this does not apply if the limited liability company will issue a participation certificate (see below);
- (iii) Participation Interest. The constituent document of a limited liability company may permit the existence of various types of participation interests with various rights and duties attached to these (such as a fixed share in profit; special rights or duties attributable to or imposed on the participant). A participant may own more participation interests (either of the same or a different type) if the constituent document so permits;
- (iv) Transferability of Participation Interest. The participation interest can be transferred to another participant or a third person subject to any transfer restrictions or pre-emption rights contained in the limited liability company's constituent document or the Act on Business Corporations. Unless the company's constituent document provides otherwise, the participant can transfer its participation

interest to another participant without any approval of a company's body and to a third person only with the approval of the General Meeting;

- (v) Pledge of Participation Interest. A participation interest in a limited liability company can be pledged under the same conditions set by law for its transfer, unless it is prohibited either by law or by the constituent document. The constituent document may also stipulate further limitations for a pledge of the participation interest;
- (vi) Participation Certificate. If the constituent document so provides, the company can issue a participation certificate (*kmenový list*) representing and incorporating the participation interest. The incorporation of the participation interest into the participation certificate will enable the participation interest to be easily transferred (instead of the conclusion of a written agreement on transfer of participation interest with notarized signatures - in the case of a transfer of participation interests not represented by the participation certificate, an agreement with endorsement of the participation certificate and subsequent hand-over of the certificate is sufficient);
- (vii) Company's Bodies. A limited liability company has no board of directors; instead, the company is represented by one or more executives. The executives can, however, form a board if the constituent document of the limited liability company so provides. There is no need to establish a supervisory board;
- (viii) Registered Capital. The minimum initial capital of each participant is 1 Czech crown ("CZK") unless the constituent document determines the initial capital as being higher. Before filing a petition for registration of the limited liability company into the Commercial Register, the whole contribution premium (*vkladové ážio*) and 30% of each participant's initial capital must be paid (the remainder of the initial capital must be paid within 5 years from registration of the limited liability company into the Commercial Register, unless the constituent document provides for a shorter time period). However, the contributions in kind shall be contributed in full prior to the registration;
- (ix) Ownership Structure. The limited liability company must have at least one participant; there is no maximum limit as to the number of participants;
- (x) No Reserve Fund. The limited liability company does not have to keep a reserve fund to cover the company's loss;
- (xi) Participants' Liability. Liability of the participants in a limited liability company is limited (the participants guarantee jointly and severally the obligations of the company up to the total amount of the unpaid contributions to the registered capital as registered in the Commercial Register at the time the participants were requested for payment by a creditor of the company); and
- (xii) Tax. A limited liability company is not a flow-through entity for Czech tax purposes.

1.2.2 Joint Stock Company

The principal features of a joint stock company are:

- (i) Constituent Documentation. A joint stock company can be formed on the basis of a constituent document, being articles of association (*stanovy*). The constituent document must be drawn up in the form of a notarial deed and must contain the minimum requirements prescribed by the Act on Business Corporations;
- (ii) Shares. Capital stock is divided into shares which may be issued in the form of a bearer or registered share ("Shares"). The registered shares can be issued as certified shares or can be maintained in the

form of book-entry (computer entry) securities in a special account at the Central Securities Depository, which is maintained by the joint stock company, Centrální depozitář cenných papírů, a.s. (www.centraldepository.cz), or can be immobilized. With the aim of increasing transparency of the ownership structure of joint stock companies, the bearer shares can be issued only as book-entry securities or as immobilized securities. Certified bearer shares which had not been immobilized prior to 1 January 2014 have been transformed automatically to certified registered shares (with effect from 1 January 2014) pursuant to the Act on Certain Measures to Increase the Transparency of Joint Stock Companies. Moreover, the identity of shareholders holding shares exceeding 10% of the registered capital has to be known by the company in order to take part in public procurement procedures since the rules on public procurement require the submission of a list of such shareholders which must be part of a bid;

A joint stock company can either issue shares with a nominal value or shares without a nominal value (*kusové akcie*). Such shares do not have a nominal value and each of them represent an identical share in the registered capital of the company. In the case that shares without a nominal value are issued, the company is not allowed to issue shares with a nominal value;

A joint stock company can issue shares with special rights attached. The Act on Business Corporations states expressly that a joint stock company can issue shares with different, fixed or subordinated shares in the profit, or shares with a different weight of votes. These special rights attached to shares must, however, be specified in the constituent document;

A joint stock company can further issue preference shares. Such shares are associated with the preferential right to dividend, other own sources of the company, or a share in the proceeds of liquidation. Preference shares are non-voting, unless determined otherwise in the constituent document. The nominal value of non-voting shares must not exceed 90% of the registered capital of a joint stock company;

- (iii) Pledge of Shares. The shares in a joint stock company may be pledged under the same conditions set by law for their transfer; subject to the limitations stipulated by the law or a constituent document;
- (iv) Limitation on the Transfer of Assets for Two Years after Formation. Should the company acquire assets from its founder or its shareholder for consideration exceeding 10% of the subscribed registered capital within two years of the company's formation, the payment for such assets must not exceed the value of the acquired asset as determined by an expert (or by another manner enabled by the Act on Business Corporations). Such a transfer, including the payment, must also be approved by the general meeting. The abovementioned does not apply if the acquisition of assets takes place under arm's length conditions, or when the acquisition is carried out at the initiative or under the supervision of a state authority or in the European regulated market;
- (v) Monistic/Dualistic Structure. The joint stock company can have either a monistic or dualistic structure of corporate management. A dualistic structure anticipates that the company's bodies will include (in addition to the general meeting) the board of directors (*představenstvo*) and supervisory board (*dozorčí rada*). The monistic structure means that, in addition to the general meeting, the company's bodies will include a board of trustees (*správní rada*), the competence of which shall generally correspond to the supervisory board in a dualistic structure and a statutory director (*statutární ředitel*), the competence of whom generally corresponds to the competence pertaining to the board of directors. The statutory director can simultaneously be a chairperson of the board of trustees;

In the case of a joint stock company with a dualistic structure, the board of directors and the supervisory board each consist of three members (unless the constituent document provides otherwise). The term of office of individual members of the board of directors and supervisory board is to be stated in the constituent document or in the agreement on performance of the office; if the term is not stated in either of these documents then the term of office of members of the board of directors is one-year and the term of office of members of the supervisory board is three years. Ex members of the board of directors and the supervisory board can be reappointed;

In a joint stock company with more than 500 employees in employment relationships, the number of supervisory board members must be divisible by three and one third of the members must be elected by the employees. The Articles of Association can provide that more than one third of the members must be elected by the employees; however, the number of supervisory board members elected by employees shall not exceed the number of supervisory board members elected by the general meeting;

In the case of a joint stock company with a monistic structure, the board of trustees consists of three members (unless the constituent document provides otherwise). The term of office of individual members of the board of trustees is to be stated in the constituent document or in the agreement on performance of the office; if the term is not stated in either of these documents then the term of office of members of the board of trustees is three years. The board of trustees elects its chairperson (*předseda správní rady*), who must be a natural person. The term of office of the chairperson of the board of trustees cannot exceed the term of his/her office as a member of the board of trustees. The term of office of the statutory director is to be stated in the constituent document or in the agreement on performance of the office; if the term is not stated in either of these documents then the term of office of the statutory director is one year;

- (vi) Registered Capital. The minimum capitalization of a joint stock company is CZK 2,000,000. If a joint stock company keeps books in Euros, according to special regulation, it may stipulate the registered capital in Euros. For such a case, the minimum capitalization of a joint stock company is EUR 80,000;
- (vii) Ownership Structure. A joint stock company must have at least one shareholder. There is no limit as to the number of shareholders;
- (viii) Separately Transferable Rights. Right to distribution of profit, preference right to subscribe to new shares and convertible and preference bonds, the right to share in liquidation surplus and other similar proprietary rights, which are stipulated by the constituent document, may be transferred independently from the share. In addition, such rights may be incorporated into a security if this is admitted in the constituent document or by law;
- (ix) Bonds. A joint stock company may issue convertible bonds and preference bonds;
- (x) No Reserve Fund. A joint stock company does not have to keep a reserve fund to cover the company's loss;
- (xi) Mandatory Web Pages. A joint stock company must maintain web pages and publish on the web pages statutory information (such as information that must be stated on the business documents, information on convocation of general meeting, etc.);
- (xii) Shareholders' Liability. Shareholders are not liable for the company's obligations (but the company is liable by its all assets); and
- (xiii) Tax. A joint stock company is not a flow-through entity for Czech tax purposes.

1.2.3 Limited Commercial Partnership

The principal features of a limited commercial partnership are:

- (i) Constituent Documentation. A limited commercial partnership can be formed on the basis of a memorandum of association (*společenská smlouva*) which does not have to be drawn up in the form of a notarial deed, a written form with officially verified signatures is sufficient. The Act on Business Corporations stipulates requirements on the minimum content of the memorandum of association;
- (ii) Ownership Structure. At least one limited partner and one general partner must found the partnership. The minimum contribution for a limited partner is to be set in the memorandum of association;
- (iii) Liability. The limited partner(s) guarantee(s) the obligations of the partnership together with other partners (general and limited) jointly and severally up to the amount of its unpaid contribution(s) as registered with the Commercial Register; general partner(s) face(s) unlimited liability regarding the obligations of the partnership. The memorandum of association can stipulate that the limited partners guarantee the obligations of the partnership up to the amount mentioned in the memorandum of association (such an amount cannot be lower than the contribution of a limited partner);
- (iv) Business Management. Only general partner(s) is/are authorized to carry out commercial management of the partnership; and
- (v) Tax. A limited commercial partnership is a flow-through entity with regard to the general partner for Czech tax purposes.

1.2.4 General Commercial Partnership

The principal features of a general commercial partnership are:

- (i) Constituent Documentation. A general commercial partnership can be formed on the basis of a memorandum of association (*společenská smlouva*) which does not have to be drawn up in the form of a notarial deed, a written form with officially verified signatures is sufficient. The Act on Business Corporations stipulates requirements on the minimum content of the memorandum of association;
- (ii) Ownership Structure. At least two partners are required to establish a general partnership and all partners jointly and severally guarantee all the obligations of the partnership;
- (iii) Profit Sharing. Profits are shared equally among the partners;
- (iv) Transferability of Participation Interest. The participation interest cannot be transferred to another partner or to a third person; and
- (v) Tax. The partnership is a flow-through entity for Czech tax purposes.

1.2.5 Branch Office

The principal features of a branch office are:

- (i) Constituent Documentation. The branch is founded by a simple resolution of the founder of the branch. The formal requirements for such resolution (if any) are prescribed by the law of incorporation of the founder;
- (ii) No Legal Capacity. A branch is not a separate legal entity, i.e. it does not have a legal capacity under Czech law and its capability to make any legal acts and perform any steps is derived from the legal capacity of its founder;
- (iii) Dependency on Founder. Activity of the branch is dependent on the directions and instructions of its founder. Business activities carried out in the Czech Republic by the branch must not exceed the scope of business activities which may be carried out by the founder;
- (iv) Restrictions on Reorganization. The branch may not be sold or merged with another branch unless the founders are sold or merged at the same time. It is possible to sell the enterprise or the assets of the branch;
- (v) The Branch's Bodies. The head of the branch (provided that the branch office as well as the head of the branch are registered in the Commercial Register) is authorized to represent the founder in all matters regarding the branch;
- (vi) No Registered Capital. There are no capitalization requirements for a branch;
- (vii) Accounting. A branch is required to maintain its books according to Czech accounting standards and on an accrual basis; and
- (viii) Tax. Subject to the provisions of any applicable tax treaty, a branch would be subject to Czech taxation on all income attributed to the activities of the branch.

1.2.6 Choice of Entity or Vehicle

Most foreign investors utilize a limited liability company, joint stock company, or branch office as the vehicle for carrying out their business activities in the Czech Republic.

The principal advantage of a branch office is that there are no capitalization requirements. The disadvantage of a branch office is that it is not a separate legal entity, thus exposing the offshore "parent company" to direct liability for actions by the branch office.

The choice between a limited liability company and a joint stock company often depends on the following factors:

	LLC	JSC
Minimum Capital	CZK 1 (minimum initial capital for each participant)	CZK 2,000,000 or eventually EUR 80,000 (minimum amount of registered capital)

	LLC	JSC
Minimum Number of Appointments Required	1 (executive)	Dualistic structure: <ul style="list-style-type: none"> • 2 (one member of the board of directors and one member of the supervisory board); or • 4 (one member of the board of directors and three members of the supervisory board) in the case of a company with more than 500 employees in employment relationships. Monistic structure: 2 (two members of the board of trustees; one of them being simultaneously appointed into the office of the statutory director)
Supervisory Board	Optional	Mandatory (in the case of a monistic structure, the supervisory board will not be established - instead, a board of trustees having competence of the supervisory board must be established)
Listed on a recognized Czech Stock Exchange	No	Optional
Registered at the Central Securities Depository	No	Depending on the form of shares
Web Pages	Optional (Mandatory in the case that the LLC entity will be part of an acknowledged holding structure)	Mandatory

1.3 Corporate Governance

Annual General Meeting. The Act on Business Corporations stipulates a six month period after termination of the relevant accounting period for the general meeting to approve the ordinary financial statements for the relevant accounting period.

In the case of a **limited liability company**, the general meeting of participants adopts resolutions by a simple majority of votes of the participants present, *unless* either: (i) a provision of law, or (ii) the company's memorandum of association requires a higher number of votes. A quorum is constituted if participants having at least half of the votes are present at the meeting (unless the memorandum of association requires a different quorum).

In the case of a **joint stock company**, the general meeting of shareholders adopts resolutions by a majority of votes of the shareholders present, *unless* either: (i) a provision of law, or (ii) the company's articles of association require a higher number of votes. A quorum is constituted if the shareholders who are present

hold shares with a total nominal value (or hold a number of shares in the case of shares without nominal value) exceeding 30% of the registered capital of the joint stock company, if the articles of association of the joint stock company do not provide otherwise.

Related Parties Report. A related parties report must be prepared by the company's statutory body within 3 months of the end of the accounting period of the company. This report should state the structure of relations between related parties (controlling entity, controlled entity and other entities controlled by the same controlling entity), the role of the controlled entity in such a relationship, the methods and means of controlling, the overview of actions undertaken in the last accounting period made on the instigation or in the interest of the controlling entity or entities controlled by such entity, on condition that such actions concern assets exceeding 10% of the controlled entity's equity capital identified in the last financial statements, overview of agreements concluded between related parties and the assessment of whether any detriment arose to the controlled entity and whether such detriment was settled. The report should also evaluate the advantages and disadvantages arising from the relationship between related parties and state whether advantages or disadvantages prevail and what risks arise for the controlled person. Furthermore, the report should state whether, how and in what period the eventual detriment was or will be balanced.

Filing. The resolution of the annual general meeting, the financial statements and the related parties report must then be filed with the Collection of Documents of the relevant company maintained by the Commercial Register. If the company's financial statements must be audited, the auditor's report, as well as the annual report of the company, must also be filed with the Collection of Documents. Such filing has to be done within 30 days following approval of the auditor (if appropriate) and approval by the annual general meeting. In any event, i.e. even in the absence of the auditor's report or approval by the annual general meeting, the company must file these documents with the Collection of Documents in the Commercial Register by the end of the next financial period (year).

Mandatory Audit. As of 1 January 2016, the Czech Accounting Act distinguishes 4 categories of entities subject to accounting duty:

- (i) micro entity – as of the balance sheet date it has not fulfilled any two of the three below stated criteria:
 - (a) total amount of assets exceeding CZK 9,000,000;
 - (b) one-year net turnover exceeding CZK 18,000,000;
 - (c) average amount of employees during the accounting period exceeding 10;
- (ii) small entity – entity which is not a micro entity and as of the balance sheet date it has not fulfilled any two of the three below stated criteria:
 - (a) total amount of assets exceeding CZK 100,000,000;
 - (b) one-year net turnover exceeding CZK 200,000,000;
 - (c) average amount of employees during the accounting period exceeding 50;
- (iii) medium entity – entity which is neither a micro entity nor a small entity and as of the balance sheet date it has not fulfilled any two of the three below stated criteria:
 - (a) total amount of assets exceeding CZK 500,000,000;
 - (b) one-year net turnover exceeding CZK 1,000,000,000;

- (c) average amount of employees during the accounting period exceeding 250; and
- (iv) large entity – as of the balance sheet date at least two of the three below stated criteria have been met:
 - (a) total amount of assets exceeding CZK 500,000,000;
 - (b) one-year net turnover exceeding CZK 1,000,000,000;
 - (c) average amount of employees during the accounting period exceeding 250.

In reference to the aforesaid, the following entities are required to have a statutory audit (subject to the exceptions set by law):

- (a) large entities;
- (b) medium entities;
- (c) joint-stock companies which are small entities if, as of the balance sheet date of the relevant accounting period and of the previous accounting period, at least one of the three below stated criteria has been met;
 - (1) total amount of assets is equal to or exceeds CZK 40,000,000;
 - (2) one-year net turnover is equal to or exceeds CZK 80,000,000; and
 - (3) average amount of employees during the accounting period is equal to or exceeds 50; and
- (d) other small entities if, as of the balance sheet date of the relevant accounting period and of the previous accounting period, at least two of the three following criteria have been met:
 - (1) total amount of assets is equal to or exceeds CZK 40,000,000;
 - (2) one-year net turnover is equal to or exceeds CZK 80,000,000;
 - (3) average amount of employees during the accounting period is equal to or exceeds 50.

Data mailboxes, accessible through the internet and operated in the Czech language only, serve as an electronic receiver of documents originating with state administrative bodies, on one side, and as a platform for sending documents to state administrative bodies, on the other. Data mailboxes are established automatically and are free of charge for legal entities registered in the Czech Commercial Register and branch offices of a foreign legal entity registered in the Commercial Register. Generally, a document is deemed to have been delivered at the moment of log-in of the individual entitled to access the data mailbox; or if log-in does not occur within 10 days from delivery of the document into the data mailbox, the document is deemed to have been delivered on the last day of this 10 day period – except for certain cases when such substitute delivery is excluded by statute.

Beneficial Owner. As a result of the implementation of the Fourth Anti-Money Laundering Directive No. 2015/849, enacted on 25 June 2015, into Czech law, each legal entity must obtain and hold the following information about its beneficial owner beginning from 1 January 2017:

- (i) Name and temporary residence address, as well as permanent residence address, if different from the temporary residence address;

- (ii) Date of birth and birth number, if assigned;
- (iii) Citizenship; and
- (iv) Information about:
 - (a) Share in voting rights, if the position of the beneficial owner is based on a direct participation in the legal entity;
 - (b) Share in distributed means, if the position of the beneficial owner is based on the fact that such beneficial owner is the recipient of such means; and/or
 - (c) Other facts, if the position of the beneficial owner is established otherwise.

Beyond the scope of the above, the entity is obligated to maintain records of its beneficial owner, as well as a document evidencing the status of the given person, for the entire duration of this relationship and for a period of 10 years after its termination.

Further, the entities registered in the Czech Commercial Register must have filed the information with the Register of Beneficial Owners by 1 January 2019. Entities registered in other public registers must file the information by 1 January 2021.

The **beneficial owner is an individual having factually or legally the possibility of exerting direct or indirect decisive influence over a legal entity**. Czech law stipulates specific assumptions, according to which the beneficial owner of a business corporation is an individual who:

- (i) Himself/herself, or jointly with persons acting in accord with him/her, has more than 25% of voting rights or has more than a 25% share in the registered capital; or
- (ii) Himself/herself, or jointly with other persons acting in accord with him/her, controls the entity specified in para 1 above; or
- (iii) Is to be the recipient of at least 25% of the business corporation's profit; or
- (iv) Is a member of a statutory body, representative of a legal entity in such a body, and/or is in a position similar to the position of a member of a statutory body, if there is no beneficial owner or if the beneficial owner is impossible to determine under paras 1 through 3 above.

The information about the beneficial owner is not generally publicly available. Apart from the entity itself, some information will also be accessible to a person who proves their legal interest in relation to the prevention of specified criminal offences. In addition, some state authorities, such as the Czech National Bank, courts and police, will have access to the information.

Commercial Documents. Each entrepreneur is required to state its business name and seat on all business documents and also make these details available to the public within the information published by means of remote access (web pages). In the case that an entrepreneur is registered in the Commercial Register, it should also give details of such entry, including the relevant section and insert number. Any entrepreneur registered in another public register shall give details about such registration. If the entrepreneur is not registered in the public register, it will state details about its registration into another evidence. If the entrepreneur was assigned an identifier (identification number), such an identifier must also be stated on commercial documents. The entrepreneur can also state further details, on the condition that such details are not capable of being misleading.

1.4 Requirements for/Duties of Members of Statutory and Supervisory Bodies

A member of a body of the company - an executive of a limited liability company, a member of the board of directors and a member of the supervisory board in the case of a joint stock company with a dualistic structure, a member of the board of trustees of a joint stock company with a monistic structure - may be both a natural person or a legal person, whereas a statutory director of a joint-stock company with a monistic structure must only ever be a natural person (jointly referred to as a member of a body of a joint stock company). If a legal person is a member of such a company's body, it must authorize an individual to represent the legal entity in such a company's body; otherwise, the legal entity is represented within the company's body through a member of its statutory body.

A member of the statutory or supervisory body of a company who is an individual must be fully capable to perform legal acts (generally, an individual becomes fully capable to perform legal acts by attaining the age of 18) and must be of unimpeachable character in the meaning of the Trades Licensing Act and no impediment should exist to his/her carrying on a trade within the meaning of the Trades Licensing Act. Unimpeachable character is proved by an extract from the Criminal Register of the relevant country (depending on his/her citizenship). The above conditions for an individual being a member of the statutory or supervisory body of a company must also be fulfilled by a representative of a legal person which is a member of such a company's body.

Non-Czech citizens may be appointed as executives or members of a body of a limited liability company as well as a joint stock company. A residency permit or visa is not required for the purposes of their registration in the Commercial Register.

A head of a branch office, if non-Czech, also does not need to possess a residency permit or visa for his/her registration with the Commercial Register.

Conflict of Interest. Notification obligation is imposed upon members of a body of a business company who, in connection with performance of their position, find themselves in existing or potential conflict with the interests of a business company. In such a case, a member of a body of a business company should, without undue delay, inform the body of which it is a member and the control body (if established), otherwise the supreme body of the company (i.e. the general meeting/sole participant), about the conflict. A similar procedure will be used in the case of a conflict of interests between the company and a person close to the member of a body of a business company, a person influenced or controlled by such a member or when such a member is influenced by the acts of either an influential or controlling person. A control body or supreme body may then temporarily suspend the concerned member of a body of a business company from his/her office.

Self contracting. If a member of a body of a business company intends to conclude an agreement with the business company then it must inform the body of which it is a member and the control body (if established), otherwise the supreme body of the company (i.e. the general meeting/sole participant), without undue delay. Simultaneously, it must state the conditions under which the agreement is to be concluded. The same applies for agreements between the company and a person close to the member of the body of the company, a person influenced or controlled by such a member or when such a member is influenced by the acts of either an influential or controlling person. The abovementioned will also apply if the company secures or confirms the obligation of the persons mentioned above or becomes their co-debtor. However, these requirements do not apply to agreements concluded under arm's length conditions.

1.5 Trade Licenses

Most business activities (whether carried out by a branch, a limited liability company or a joint stock company) require the issuance of a trade license by the business license department of any municipal office in the Czech Republic (the "Office"). The type of trade license required depends on the scope of business of the branch or legal entity. Certain activities, such as banking, insurance and broadcasting, require special licenses issued directly by the relevant state authority.

Please note that there are two categories of trades: "notifiable" trades, which might be carried out by virtue of a notification to the relevant Office and "concession" trades, which might be carried out by virtue of a concession granted by the relevant Office. To engage in business activities that fall within the scope of "notifiable" trades, the applicant needs only to notify the relevant Office (in the prescribed form) that it intends to engage in such activities. Provided that the general conditions have been met, notification alone is sufficient to allow the company (applicant) to commence such activities. On the other hand, business activities that fall within the scope of "concession" trades may be undertaken only after permission (concession) is granted by the relevant Office. In the case of a newly incorporated entity, authorization to carry out business activity originates, at the earliest, as of the day of registration of the new entity in the Commercial Register.

The following types of business activities are classified as "notifiable trades":

- (i) unregulated trades (e.g. the purchase and sale of goods, consulting services);
- (ii) crafts (e.g. woodwork, metalworking, printing, leatherworking); and
- (iii) regulated trades (including professional qualifications) (e.g. engineering).

Except for the unregulated trades (which are the simplest trade licenses to obtain) a qualified person is required to carry out a trade. In the case of a natural person, a qualified person may be the trade license holder provided that he/she has the necessary qualification. However, in the case of a legal person, it shall appoint its so-called "responsible representative" who is responsible for the due carrying out of a trade and fulfilling trade license regulations. A trade license holder – a natural person may also appoint such a responsible representative voluntarily.

The responsible representative:

- (i) does not need to be in an employment relationship with the company (trade license holder) - any kind of contractual relationship with the company is acceptable; however, a trade license responsible representative cannot be a member of the supervisory board or another control body of the company (trade license holder);
- (ii) does not have to be a resident of the Czech Republic (does not need a permanent residency address); and
- (iii) does not need to prove his/her knowledge of the Czech or Slovak languages (trade license holders selling goods or providing services to consumers in an establishment/shop must have a Czech or Slovak speaking person present in their place of business).

The responsible person must possess certain educational and practice requirements depending on the type of the trade.

1.6 Foreign Exchange

There are generally no specific restrictions applicable to investments in the Czech Republic by a non-resident. However, certain limitations may apply according to the Czech Crisis Management Act, Act No. 240/2000 Coll. In case of an emergency, the Czech government can particularly prohibit:

- (i) the acquisition of foreign currency assets, securities and book-entry securities the issuer of which is a resident or domiciled outside the territory of the Czech Republic for Czech currency;
- (ii) making all payments from the Czech Republic abroad, including payments between payment service providers and their branches;
- (iii) the deposit of funds for accounts abroad;
- (iv) the sale of securities and book-entry securities, the issuer of which is a resident or registered office in the Czech Republic, persons with permanent residence or registered office outside the territory of the Czech Republic;
- (v) receiving loans from persons with permanent residence or registered office outside the territory of the Czech Republic;
- (vi) the establishment of accounts in the Czech Republic for persons with permanent residence or residence outside the territory of the Czech Republic and the deposit of funds into their accounts; and
- (vii) the implementation of all payments from abroad to the Czech Republic between payment service providers and their branches.

Moreover, certain notification duties may apply. Entities which are subsumed pursuant to notification by the Czech National Bank under the group of statistically significant entities are required to notify certain investments to the Czech National Bank. As regards direct investments, a domestic company with direct investment by a foreign investor must report the direct investment to the Czech National Bank if the foreign investor's share in the domestic company's business, or the amount of loans provided or accepted within the direct investment in the Czech Republic, amounts to at least CZK 25,000,000 at the end of the calendar year.

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2. Taxation

2.1 General Overview

2.1.1 Applicable Taxes

The following taxes apply in the Czech Republic:

- (i) Income Tax, which is divided into (a) Personal Income Tax and (b) Corporate Income Tax;
- (ii) Value Added Tax;
- (iii) Excise Duties (on hydrocarbon fuels, spirits, tobacco, beer and wine);
- (iv) Road Tax (on road vehicles used for business purposes);
- (v) Environmental Taxes;
- (vi) Real Estate Transfer Tax; and
- (vii) Real Estate Tax.

No stamp/registration duties or capital increase/contribution duties currently apply in the Czech Republic. Environmental Taxes (excise duties on some other fuels (coal, gas, electricity) were introduced as of January 1, 2008.

2.1.2 Tax Authorities and Tax Ruling

Taxation is administered by district "Financial Offices" which report to "General Financial Directorate." The decisions of tax authorities may be reviewed by administrative courts. A decision from regional administrative courts may be reviewed by the Supreme Administrative Court.

Czech tax authorities do not issue any individual legally binding tax rulings (with minor exceptions). Furthermore, legally binding guidelines are not issued regarding individual bodies of tax law. The General Financial Directorate issues general guidelines interpreting some provisions of tax law. These guidelines should be binding for tax administrators, though not for taxpayers, but are also practically followed by taxpayers.

2.1.3 Tax Audits

Tax authorities may perform a tax audit and reassess tax for up to three years following the date on which the tax return was due. This time period is automatically extended for a new three-year period as a result of a tax audit. The time period is also automatically extended by an additional 1 year if, in the last 12 months, the taxpayer filed an additional tax return, the decision of the tax authorities or appeal decision was delivered to the taxpayer, or certain other circumstances occurred; nonetheless, tax cannot be re-assessed when a period of 10 years expires following the date when the tax return was due; the only exception is if a tax offense was committed according to a final decision of the court. A special time period applies for taxpayers in a tax loss position.

2.1.4 Tax Penalties

- Penalty of 0.05% of actual tax liability for each day (up to 5% of actual tax liability, maximally up to CZK 300,000) when a tax return is filed after the statutory deadline.

- Penalty of 20% when a taxpayer's tax liability is increased or its tax deduction is reduced by the tax authorities during a tax audit.
- Penalty of 1% if the tax authorities reduce the amount of a taxpayer's tax losses.
- Interest for late payment of tax of the repo rate of the Czech National Bank (currently approximately 1.75% per annum), increased by 14 percentage points. Interest on late payments may be assessed for a maximum of five years.
- Further, penalties for non compliance with the administrative obligations can be imposed in the amount of:
 - (a) Up to CZK 500,000 for non compliance with the registrations or other notification obligations;
 - (b) CZK 2,000 if the tax payer does not meet the requirement to submit certain filings electronically. This penalty can be increased up to CZK 50,000 in serious cases.

2.2 Corporate Income Tax

2.2.1 Scope of Taxation

For Czech legal entities, as well as foreign entities whose place of management is in the Czech Republic ("Czech tax residents"), income subject to taxation is generally gross worldwide income (excluding tax exempt income), less tax deductible expenses, less non-taxable revenue and allowable deductions.

2.2.2 Partnerships

A special tax regime applies to general partnerships and limited partnerships, which are partly or entirely "transparent" companies for Czech tax purposes. Income of general partners is taxed at the partner's level, whereas income of limited partners is taxed at the company's level, with a potential withholding tax on distributed dividends in certain cases.

2.2.3 Permanent Establishment

Branches of foreign entities are generally regarded as permanent establishments of foreign enterprises for Czech tax purposes. Tax authorities may deem the profit of a branch to be that of a similar sized entity if it is not possible to ascertain the actual profit attributable to activities of the branch in the Czech Republic. A special method of taxation could be granted to "non-trading" branches by tax authorities.

The concept of a permanent establishment is broadly defined in the Czech Income Taxes Act, as well as in the double tax treaties concluded by the Czech Republic. Nonetheless, besides the fixed place of business through which the business of a foreign enterprise is carried out, a permanent establishment is also deemed to exist in a case of provision of services on the territory of the Czech Republic for a period exceeding six months in any twelve month period (this period is modified by some double tax treaties).

2.2.4 Tax Rates

Income generated by legal entities is subject to a corporate tax rate of 19% for tax periods beginning in 2011 or later. A special tax rate of 5% applies for income of certain investment, mutual and pension funds. Capital gains of legal entities are treated as ordinary income and taxed at the standard rate of 19%, but participation exemption is also available in certain cases.

2.2.5 Source of Income

Czech tax residents are subject to Czech income tax on their worldwide income. Czech tax non-residents are subject to Czech income tax only on their Czech sourced income, which is deemed to be as follows, regardless of who pays such income (with the exception of point (e)):

- (i) Income derived from activities carried out by a permanent establishment;
- (ii) Income derived from services (with the exception of construction assembly projects), including income from commercial, technical or other consultancy services, managerial or intermediary services and similar kinds of services provided in the Czech Republic;
- (iii) Income generated from the sale of real estate situated in the Czech Republic and rights related thereto;
- (iv) Income generated from use of real estate (or its parts), including flats (or their parts) situated in the Czech Republic;
- (v) Income derived from Czech tax residents and from Czech permanent establishments of Czech tax non-residents, which are:
 - (a) Payments for the right to use, or for using, someone else's intangible industrial (intellectual) rights, software, production and technological know-how and other economically exploitable know-how;
 - (b) Payments for the right to use, or for using, copyrights, or rights similar to copyrights;
 - (c) Shares in profits, settlement shares, liquidation shares in business entities, including co-operatives, other income derived from capital and a proportion of after-tax profits paid to a silent partner. Shares in profits shall also mean an income of unjustified differences between an agreed price and the usual arm's length price in transactions between related persons, as well as interest expense to be considered as tax non-deductible as a result of the thin capitalization rules;
 - (d) Interest and other yields on credits and loans, deposits and securities;
 - (e) Income derived from the use of a movable asset, or its part, in the Czech Republic;
 - (f) Income derived from the sale of movable assets being included in the business property of a permanent establishment, securities issued by taxpayers whose registered office is in the Czech Republic, property rights registered in the Czech Republic and an ownership interest or share in a business entity having its registered seat in the Czech Republic;
 - (g) Income of the shareholder of a business entity derived in relation to a decrease of registered capital;
 - (h) Income from settlement of a receivable acquired through assignment;
 - (i) Contractual penalties; and
 - (j) Revenues for no consideration.
- (vi) Income from the sale of participation in Czech resident business corporations.

The aforementioned regulations of Czech sourced income subject to Czech income tax could be modified by a relevant double tax treaty.

2.2.6 Tax Base

Tax base is based on economic result, calculated based on Czech statutory accounting standards and adjusted by non tax-deductible expenses and non-taxable incomes. A tax base may also be deducted by certain tax base allowances (e.g. charity donations). Tax liability calculated from a final tax base may be reduced by certain tax allowances (e.g. allowances for disabled employees).

2.2.7 Tax Deductible Expenses

Generally, any expense can be deducted for tax purposes provided that it has been incurred to generate, maintain and secure taxable income and that the tax payer is able to prove that occurrence. This general definition is accompanied by a non-exhaustive list of expenses, which are expressly stated as tax deductible. Deductible expenses include, for example:

- Tax depreciation of tangible assets and tax amortization of fixed intangible assets (for intangible fixed assets various statutory provisions apply based on the year of acquisition of the asset);
- Tax net book value of tangible and intangible assets upon their disposal by way of sale or liquidation;
- Mandatory health and social security payments made by employers (provided that they have been paid no later than one month after the end of the taxable period);
- Rental paid for lease of business premises (subject to certain restrictions when a leased asset is purchased by the tenant);
- Financial leasing instalments (subject to certain regulated limits) and ordinary leasing instalments;
- Certain taxes paid (including real estate and real estate transfer taxes and income taxes);
- Bank and other professional fees (e.g. brokerage fees for securities trades, organization of employers), but excluding company associations fees (e.g. chambers of commerce participation fees);
- Business trip expenses (e.g. expenditure on accommodation, travel expenses and meal allowances up to certain statutory limits); and
- Employee benefits (e.g. severance payment payable upon termination of employment caused from the employer's side) which arise out of any internal company regulation, a collective bargaining agreement with any applicable union or employment or other agreement, unless tax law stipulates otherwise for some kind of benefits; employee benefits are provided under employment agreements only when provided for work performed.

2.2.8 Tax Non-Deductible Expenses

Some tax non-deductible expenses are also expressly defined. This non-exhaustive list of tax non-deductible expenses include, *inter alia*.

- Loss from sale of a receivable decreased by created statutory bad debt provisions;
- Expenses on the holding of a share in a subsidiary, including interest expenses; and

- Taxes paid on behalf of another taxpayer.

2.2.9 Tax Depreciation

Tangible fixed assets with a price exceeding CZK 40,000 and with an operational life of more than one year are depreciated annually (with minor exceptions). The minimum tax depreciation period varies according to the depreciation group into which that particular tangible asset is classified. Currently, Czech tax law divides tangible fixed assets into six categories, with depreciation periods ranging from 3 to 50 years. Tangible fixed assets are generally depreciated up to the acquisition value.

Two tax depreciation methods are generally available: a straight-line method and an accelerated method. The choice of method must be made on an asset-by-asset basis and, once made, cannot be changed. Certain assets may not be depreciated (e.g. natural resources, plots of land).

Similarly, intangible fixed assets with a price exceeding CZK 60,000 and with an operational life of more than one year are depreciated on a monthly basis (with minor exceptions). The depreciation periods range from 18 to 72 months.

Expenditures for technical improvements to fixed assets exceeding a certain threshold increase the acquisition/residual value of the asset and must be depreciated together with the improved asset; a special regime applies to improvements of leased assets financed by the lessee and when the improvement could be depreciated by the lessee as a separate fixed asset.

2.2.10 Tax Loss Utilization

Tax base may be reduced by tax losses from previous years and may be carried forward for a period of up to five years. Tax losses cannot be carried back. Furthermore, the possibility to utilize a tax loss carried forward from previous tax periods is generally restricted, provided that the company was subject to a change in ownership or participated in a legal transformation and that the scope of business of the company materially changed in comparison with the tax period when the tax loss was incurred. A legally binding ruling could be obtained from the Czech tax authorities on whether the tax loss could be utilized in a particular case.

2.2.11 Capital Gains and Losses

Capital gains from sale of fixed and financial assets are taxable at the general corporate income tax rate of 19% (5% for mutual, investment and pension funds). Capital gains realized by Czech tax non-residents from the sale of shares/ownership interest in a Czech company to a Czech tax resident (or to a Czech permanent establishment of a Czech tax non-resident) represent Czech sourced income subject to Czech income tax. Nonetheless, this tax on capital is normally eliminated by the applicable double tax treaties (with certain exceptions).

Capital losses from disposal of tangible and intangible assets are generally recognized as tax deductible (with exceptions for loss from sale of land). Losses on securities, shares not valued at market value (shares in subsidiaries), promissory notes and other items (e.g. receivables, ownership interests in limited liability companies), are non-deductible and cannot be carried forward.

2.2.12 Participation Exemption

Based on the new tax legislation effective as of January 1, 2008, dividends and capital gains of parent companies realized on sale of shares and participations in their subsidiaries qualify for corporate income tax exemption if certain conditions are met.

Generally, the conditions can be divided into two sections, i.e. those that are applicable to all subsidiaries and those that deviate depending on the location of the subsidiary. Both categories are briefly summarized below:

Overall conditions for corporate income tax exemption:

- (i) Capital gain is realized by a parent company established or effectively managed in the Czech Republic or a tax resident of another European Union country, Norway or Iceland;
- (ii) The parent company has the legal form of a limited liability company, a joint stock company or a co-operation under Czech commercial law or a legal form mentioned in the Annex to Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;
- (iii) The parent company is the beneficial owner of the capital gain;
- (iv) The parent company keeps at least 10% of the registered capital of the subsidiary for a period of at least 12 months;
- (v) The subsidiary is not in the process of liquidation; and
- (vi) Shares or participation that are subject to the sale were not acquired within a transfer of business or its part.

Specific conditions for corporate income tax exemption

- A subsidiary – a Czech entity
 - (a) The subsidiary is established or effectively managed in the Czech Republic;
 - (b) The subsidiary has the legal form of a Czech limited liability company, joint stock company or co-operation under Czech commercial law.
- A subsidiary – a foreign entity located in the European Union, Norway and Iceland
 - (a) The subsidiary is a tax resident of a Member State of the European Union, Norway or Iceland;
 - (b) The subsidiary has the legal form mentioned in the Annex to Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;
 - (c) The subsidiary is subject to tax mentioned in the Annex to Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;
 - (d) The subsidiary is not exempt from corporate income tax, does not have an option for exemption and is not subject to the zero rate of corporate income tax (or similar tax).
- A subsidiary – a foreign entity located outside the European Union, Norway and Iceland
 - (a) The subsidiary is a tax resident of a country which concluded a Double Tax Treaty with the Czech Republic;
 - (b) The subsidiary has a legal form similar to a Czech limited liability company, joint stock company or co-operation;

- (c) The subsidiary is subject to tax similar to Czech corporate income tax at least at the tax rate of 12%. This criterion must be met, at the very least, in the taxable period of transfer and in one previous taxable period.

In order to benefit from the corporate income tax exemption all the conditions mentioned above need to be met. If any one or more conditions are not fulfilled, capital gain from the transfer of share is subject to corporate income tax of 19%. The original purchase price and certain other costs related to the transferred share may be used, with some exceptions, as tax deductible items.

2.2.13 Transfer Pricing

Transfer prices agreed between persons related either by capital or by another manner should be based on an arm's length principle; otherwise, the tax authorities are authorized to adjust the taxpayer's tax base by an ascertained difference.

The tax authorities have been instructed to follow the OECD Transfer Pricing Guidelines when determining the arm's length price between taxpayers when one of them is from a country that concluded a tax treaty with the Czech Republic.

Persons related by capital are generally those whose direct or indirect participation in the capital of, or voting rights in, one company by another company is greater than 25%. Persons related by another manner are those who have relationships between persons directly or indirectly participating in management or control, or have entered into a legal relation for the purpose of decreasing the tax base or increasing the tax loss.

2.2.14 Tax Grouping and Tax Consolidation

Tax grouping has not been introduced; therefore, each taxpayer must file its own tax return and any intra-group transaction cannot be consolidated for Czech income tax purposes. Furthermore, the fiscal unity concept has not been introduced and it is not possible to offset intra-group losses and profits (with certain exceptions for partnerships).

2.2.15 Tax Period

An accounting and tax period is either a calendar year or an economic year. An economic year is the 12 month period beginning on the first of day of a month other than January. Any change of an accounting and tax period from a calendar year to an economic year, and *vice versa*, must be notified to the competent Tax Office at least three months prior to the planned change.

A newly established company can decide within 30 days following its establishment to apply the economic year. This decision has to be notified to the tax authorities within 30 days after establishment of the company.

2.2.16 Income Tax Returns and Payments

A tax return must be filed, at the latest, three months following the end of the annual tax period. By that same time the due tax declared in the tax return must be settled.

The date for submission is extended by another three months if the taxpayer appoints a tax advisor or attorney to submit the tax return under a power of attorney; such extension is automatic for taxpayers who are required by law to have their financial statements audited.

2.2.17 Withholding Taxes

A withholding tax of 15% applies on dividends modified by applicable double tax treaties and, in certain cases, by Czech tax law. The rate of 15% applies on interest paid abroad by a Czech debtor - modified by applicable tax treaties. A rate of 15% also applies on royalties paid abroad by a Czech licensee - modified by an applicable tax treaty.

As of 1 January 2013 a withholding tax rate of 35% was introduced. This tax rate applies to income of recipients who:

- (i) are not residents of another EU Member State or of a Member State of the European Economic Area; and
- (ii) are not residents of a state with which the Czech Republic has concluded a valid and effective treaty for avoiding double taxation or treaty for exchange of tax related information.

Where Czech sourced income is paid abroad, but not subject to withholding tax, a Czech payer could be required to withhold tax securing from 1 to 10% (not applicable in certain cases, e.g. when the receiver of income is a tax resident in the European Union or in another state of the European Economic Area).

2.2.18 EU Parent Subsidiary Directive

This was implemented into Czech tax law for dividend distributions approved after 1 May 2004; distributed dividends are exempt from tax under the following conditions:

- (i) The dividend is received by a parent company established or effectively managed in the Czech Republic or a tax resident of another European Union country, Norway, Iceland or Switzerland;
- (ii) The parent company has the legal form of a limited liability company, a joint stock company or a co-operation under Czech commercial law or legal form mentioned in the Annex to Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States;
- (iii) The parent company is the beneficial owner of the dividends;
- (iv) The parent company keeps at least 10% of the registered capital of the subsidiary for a period of at least 12 months, either prospectively or retrospectively;
- (v) A Czech subsidiary has a legal form of either a limited liability company, a stock exchange company or a co-operative; and
- (vi) The Czech subsidiary is not in the process of liquidation.

2.2.19 EU Merger Directive

Mergers (as well as de-mergers, capital contributions and share exchanges) are generally treated as a tax neutral operation with no tax on non-realized incomes arising from the mergers. Tax-effective step-up is not available in the course of a merger.

Tax-effective reserves, provisions and losses (assessed for the tax period started in 2004 at the earliest) of the liquidated company may be utilized by the surviving company under certain conditions; nonetheless, a tax loss cannot be carried forward if the merger is tax driven, i.e. the scope of business of the surviving company must be retained to a certain extent by the surviving company in order to utilize the tax loss.

2.2.20 EU Interest and Royalty Directive

Interest payments from a Czech company to its related company, established in another EU member state, are exempt from Czech withholding tax. The same tax exemption for royalties applies from January 1, 2011. A receiver must obtain a special decision of the Czech tax authorities on application of the tax exemption.

2.2.21 EU Private Savings Directive

Tax exemption for interest on private savings for individuals seated in other EU member states has been implemented. These provisions became effective once the Directive came into force (June 1, 2005).

2.3 Personal Income Tax

2.3.1 Taxable Income and Tax Rates

Individuals with a permanent address in the Czech Republic, or physically present in the Czech Republic for more than 183 days during a particular calendar year, are deemed to be Czech tax residents and are taxed on their worldwide income in the Czech Republic (with possible tax relief under the double tax treaties by tax credit or exemption). The tax status/domicile of an individual may be affected by tie-breaker provisions of an applicable tax treaty.

Other individuals who do not have Czech tax residency are taxable only on their Czech sourced income. This especially includes income from dependent activity performed on the territory of the Czech Republic. Provisions of relevant double tax treaties may provide relief from Czech tax, both for Czech tax residents and non-residents.

The current tax rate for individuals is 15%. This tax rate can be increased by so called solidarity increase of personal income tax of 7% which is applicable from 1 January 2013.

In particular, the solidarity increase of personal income tax of 7% should be applied on the difference between:

- (i) the aggregate income from dependent activity together with the aggregate tax base from independent activities; and
- (ii) the amount of average salary multiplied by 48 (i.e. in total CZK 1,569,552 for 2019).

2.3.2 Income from Dependent Activities

This includes salaries, wages, bonuses and other compensations, irrespective of their nature and title, for activities where a person must follow instructions of his/her employer. This income also includes fees paid to directors, members of statutory bodies of companies, and executives and partners of limited liability companies for work performed, even if they are not obligated to follow orders given by another person.

The tax base for calculation of personal income tax from dependent activities includes: (i) gross income of the employee, including mandatory social and health insurance contributions paid by the employee and (ii) mandatory social and health insurance charges paid by the employer.

Tax allowances (e.g. interest on housing saving loans and mortgage loans) may be claimed in the actual amount after the end of the relevant taxable period. Documented tax credits (e.g. annual personal tax credit, tax credit for a disabled spouse, tax credit for dependent children, etc.) can be claimed on a monthly basis, in the amount of 1/12 of the annual relief.

Under provisions dealing with payroll administration from January 1, 2008, employers are obligated to withhold tax advances in the amount of 15% from the monthly tax base adjusted by the tax relief specified above.

Fees paid to non-Czech members of a Czech legal entity's statutory bodies are subject to a 15% final withholding tax at the source.

2.3.3 Income from Business Activities

An individual's tax base from business activities and professional services includes:

- Income from business trades and other independent business activities;
- Income of general partners of general partnerships and limited partnerships;
- Income from copyrights and industrial property royalties; and
- Income from lease of property included in the business property.

The taxpayer may choose the method of tax base calculation. The following method may be used for this purpose:

- Economic result based on accounting;
- Difference between income and expenses based on tax evidence; and
- Difference between income and a lump-sum deduction of 30% to 80% of income (with some limitation).

If economic result is used for tax base calculation, the income may be deducted by tax deductible expenses, which is the same for legal entities.

2.3.4 Capital Income

An individual's income from capital includes, especially:

- Interest income;
- Dividends income;
- Income from silent partnership;
- Income from bank deposits; and
- Gain from single deposit.

Dividends and interest income from bank private savings are subject to a final withholding tax of 15%. Other income is subject to regular income tax rates representing part of the individual's tax base.

2.3.5 Rental Income

Rental income includes *inter alia* income from lease of real estate or flats; income from lease of movable assets, except for occasional leasing.

Rental income is included in the general tax base subject to regular income tax rate. When calculating the tax base, expenses incurred in order to generate, secure or maintain taxable income are generally tax deductible. An individual has an option to deduct lump sum expenses if he or she does not demonstrate the actual

amount of the deductible expenses incurred. The rate of 30% of gross revenues applies for such lump sum expenses where the maximum amount that can be claimed as taxable expense is CZK 300,000.

2.3.6 Other Income

This category includes any other income which increases the taxpayer's property and which is not specified in other income categories; for example, if not exempt from tax according to other provisions of the legislation this category includes income from sale of certain shares, income from sale of participation interests in a limited liability company, income from sale of real estate and income for no consideration (e.g. gifts).

2.3.7 Tax Allowances

The sum of partial tax bases may be reduced by the following tax allowances:

- Interest on housing saving loans and mortgage loans used for individual's housing needs up to CZK 300,000 annually and on all loans in the same household;
- Life insurance contributions for a qualified life insurance of up to CZK 24,000 per tax period (under certain conditions);
- Pension fund contributions exceeding CZK 12,000 of up to CZK 24,000 per tax period;
- Contributions to trade unions up to 1.5% of individual's employment tax base (but not more than CZK 3,000); and
- Charity contribution of up to 15% of the individual's tax base (under certain conditions).

2.3.8 Tax Credits

Tax liability may be further reduced by the following tax credits:

- Annual personal tax credit of CZK 24,840; and
- Annual tax credit per child of CZK 15,204, per second child of CZK 19,404 and per third and more children of 24,204;
- Annual tax credit corresponding to the costs of the preschool facilities (e.g. kindergarten) of the child. The maximum amount that can be credited is CZK 12,200.

2.3.9 Tax Return

An individual who receives taxable income must file his/her annual tax return, with exception for (i) income from employment subject to Czech payroll tax, (ii) income subject to final withholding tax, and (iii) non-taxable income and tax exempt income. The tax return must be filed by 1 April of the next year; an extension may be granted on an individual basis for another three months. Due tax must be settled in the same tax period.

2.3.10 Mandatory Social and Health Insurance Contributions

Income from dependent activities, as well as from performance of independent business activities, is subject to mandatory social and health insurance contribution, provided that the individual participates (obligatory or voluntarily) in the Czech social system.

Individuals working in the Czech Republic must generally participate in the Czech social security system (comprising of pension insurance, sickness insurance, unemployment insurance and health insurance) and pay related contributions; it is irrelevant whether the employment contract is governed by Czech or foreign law. Nonetheless, EU social security legislation has been applicable in the Czech Republic since May 1, 2004 and modifies application of the Czech social security system to certain migrating individuals.

The following social security and health insurance rates apply for 2018:

	Employer	Employee	Total
Social Security	25%	6.5%	31.5%
Health Insurance	9%	4.5%	13.5%
Total	34%	11.0%	45.0%

The annual basis for calculation of social insurance contributions is capped at the amount of 48 times the average monthly salary per employee. The calculation of average monthly salary is subject to special rules. For the year 2019, the annual cap for social insurance amounts to CZK 1,569,552.

The cap for health insurance was abolished in the year 2013.

If an employee participated in the second pillar of the pension system, the contribution as mentioned above differed slightly - as demonstrated below:

	Employer	Employee	Total
Social Security	25%	8.5%	33.5%
Health Insurance	9%	4.5%	13.5%
Total	34%	13.0%	47.0%

The employee's contribution must be withheld by the employer from the employee's remuneration and, together with the employer's contribution, must be transferred to the social security and health insurance authorities.

The tax base for calculation of personal income tax from dependent activities includes: (i) gross income of the employee, including mandatory social and health insurance contributions paid by the employee and (ii) mandatory social and health insurance charges paid by the employer.

The possibility of entering in the second pillar was cancelled as of January 1, 2016.

2.4 Value Added Tax ("VAT")

2.4.1 General

Czech VAT law is harmonized with EU VAT law. Czech VAT is levied upon the following transactions performed within the Czech Republic:

- Supply of goods, including transfer of certain real estate, and provision of services, including transfer of rights;
- Acquisition of goods (intra-community acquisition) from other EU countries and acquisition of services (reverse-charge) from other EU countries and from third countries; and
- Import of goods from third countries.

A distinction must be made between:

- VAT non-taxable supplies, such as, for example, the sale or capital contribution of a business unit/enterprise or assignment of an owned receivable, where no output VAT is payable, but input VAT may be deductible;
- VAT taxable supplies, where output VAT is payable, but input VAT may be deducted on received supplies;
- VAT tax-exempt supplies with a right for an input VAT deduction, such as the export of goods to non-EU countries or intra-community supply of goods to VAT payers seated in other EU member states, or international transportation services related to the import/export of goods, where no output VAT is payable, but input VAT is deductible; and
- VAT tax-exempt supplies without a right for an input VAT deduction, such as broadcasting, financial, social and educational services, transfer of ownership in certain buildings or parts of buildings or lease of real estate, where no output VAT is payable, but input VAT is not deductible.

2.4.2 VAT Payers

Persons or entities having a seat, place of business or establishment in the Czech Republic, who carry on economic activities and whose turnover exceeds CZK 1,000,000 for a maximum of the past twelve successive months, are liable to register for VAT purposes. Should a person not achieve the registration threshold, voluntary registration is possible if the person is able to demonstrate that he carries out economic activities. A foreign entity is obligated to register for Czech VAT purposes once it starts to perform taxable supplies having the place of taxable supply in the Czech Republic (if this entity is obliged to assess and pay VAT) or it starts to supply goods to another EU Member State from the Czech Republic; there is no registration threshold stipulated for these entities.

Special VAT registration thresholds apply in certain cases:

- Acquisition of goods from another EU country with worth exceeding CZK 326,000 in the relevant calendar year; and
- Sale of goods by a taxable person from another EU Member State to Czech non-commercial persons through distance selling with a worth exceeding CZK 1,140,000 in the relevant calendar year.

2.4.3 Identified Persons

Together with VAT payers, the Czech VAT Act also recognizes Identified persons who are liable to register for VAT, however they do not have the same rights and obligations as VAT payers.

Identified persons are considered e.g.:

- (i) Taxable persons who are not Czech VAT payers that acquire goods subject to the VAT from another EU Member State;
- (ii) Persons or entities having a seat, place of business or establishment in the Czech Republic, who are not VAT payers and who acquire services from a person not established in the Czech Republic;
- (iii) Persons or entities having a seat, place of business or establishment in the Czech Republic, who are not VAT payers and who provide services having a place of taxable supply in other EU Member States.

The Identified persons are obliged to declare the VAT relating only to the cross-border supplies. From the Czech market perspective (i.e. for the local supplies), the Identified persons are considered as taxable persons not registered for VAT.

Unlike the VAT payers, the Identified persons do not have the right for VAT deduction.

2.4.4 VAT Rates

A standard rate of 21% is levied on most goods and services. A reduced rate of 15% is levied on certain goods such as food and certain services such as certain residential construction services, cultural events and social care services (provided that they are not VAT exempt). Beginning January 1, 2008 only residential dwellings classified as social due to their limited flooring are subject to the reduced VAT rate of 15%.

As of January 1, 2015, the second reduced VAT rate of 10% was introduced for books, some baby food and certain medical goods (e.g. vaccines).

2.4.5 VAT Period, Returns and Payment

Primarily, the taxable period is a calendar month.

The tax payer can decide to apply for a quarterly taxable period provided that:

- (i) his/her turnover for the previous calendar year did not exceed the amount of CZK 10,000,000;
- (ii) he/she is not considered an unreliable tax payer; and
- (iii) he/she applies for the change of taxable period within January of the respective calendar year.

The tax payer cannot apply for the quarterly taxable period during the year of VAT registration and the contiguous year after VAT registration.

VAT returns must be submitted electronically within 25 days following the end of the applicable VAT period. Payment of VAT is due at the same time that the VAT return is due.

The Identified persons submit the VAT returns only for the months during which they realized a cross-border supply.

2.4.6 Invoice Matching Report

As of January 1, 2016 the obligation to submit an Invoice matching report was introduced for VAT payers in the Czech Republic.

In the Invoice matching report, the VAT payers disclose certain realized transactions (e.g. local supplies of goods/services, local purchases, acquisition of goods from other EU Member States). It should contain information such as the VAT identification number of the customer, invoice number, date of taxable supply, the taxable amount and the VAT amount.

The legal entities should submit the Invoice matching report electronically on a monthly basis, within 25 days following the end of respective calendar month.

The private persons should submit the Invoice matching report electronically within 25 days following the end of their taxable period, i.e. on a monthly or quarterly basis.

2.4.7 Unreliable Tax payer

If the taxpayer significantly breaches its tax obligations the tax authorities can decide that this tax payer is considered as unreliable.

Information on whether a tax payer is considered reliable or unreliable is publicly accessible on the internet.

2.4.8 Input VAT Deduction

The VAT payer is entitled to exercise, through his VAT return, the right to deduct input VAT with respect to taxable supplies received (including imported goods) and used for his own economic activities, if he has a valid VAT invoice.

If the amount of input VAT recoverable in the relevant VAT period exceeds output VAT payable in that period, VAT in excess is refundable to the VAT payer within 30 days following the deadline for submission of a VAT return for the relevant VAT period.

Input VAT is not recoverable for supplies received regarding provision of VAT exempt supplies without the right for an input VAT deduction. If a VAT payer performs taxable and exempt supplies, it is entitled to claim partial recovery of the input VAT related to the inputs used for both types of supplies. This is calculated by multiplying the aggregate input VAT for the relevant tax period with the pro rata coefficient. The following taxable supplies are VAT exempt without a right for input VAT deduction:

- Postal services;
- Sound and TV broadcasting;
- Financial services;
- Insurance services;
- Transfer and lease of certain real estate;
- Education and training services;
- Medical services and goods;
- Social services;
- Lotteries and similar games and their operations; and

- Supply of goods used for VAT exempt supplies where input VAT was not deductible upon their acquisition.

2.4.9 Input VAT Refunding

Non-Czech business entities may require refunding of input VAT paid as part of the purchase price for supplies subject to Czech VAT and used for their taxable activities. Rules for VAT refund are, in principle, based on the EU refund directives.

Refunds are made upon request of the foreign entity. In case of EU entities, the request is filed with the relevant authority in the Member State of its establishment. Non-EU entities file the refund applications on a prescribed form with the Financial Office for Prague 1.

2.4.10 INTRASTAT Reporting

The INTRASTAT reporting system has applied in the Czech Republic since 1 May 2004. Under this system, a Czech VAT payer performing intra-community transactions regarding supply/acquisition of goods must report these transactions to the Czech customs authorities using special forms, provided that the value of intra-community transactions exceeds the stipulated threshold. The same threshold applies for intra-community acquisition and for intra-community supplies of goods, i.e. CZK 8,000,000.

Data required should be reported, in writing or electronically, for the period of a calendar month. Entities with minimum intra-community transactions are exempt from the INTRASTAT reporting duty.

2.5 Other Taxes

2.5.1 Real Estate Transfer Tax

Any transfer of real estate for a consideration is subject to a 4% real estate transfer tax, payable by the transferee. The tax base is either the agreed transfer price or the value calculated according to the specific rules - whichever is higher. Special real estate transfer tax exemptions apply for the transfer of real estate during the course of mergers and acquisitions.

2.5.2 Real Estate Tax

Real estate tax is imposed on buildings and plots of land registered in the Real Estate Cadastre, depending on their size and location. Real estate tax is generally paid by the owner; the tax period is a calendar year and tax is assessed based on the situation as of 1 January; any transfer of real estate is irrelevant. The tax return must be filed by 31 January of the actual tax period. The due date for settlement of the tax depends on the amount of tax assessed and the type of real estate.

2.5.3 Road Tax

Road tax is payable for all vehicles registered in the Czech Republic and used for business purposes, regardless of whether the vehicles are owned by business entities; employees' cars used for employers' business trips are also subject to road tax. The tax period is a calendar year. The tax return must be filed by 31 January of the following year. The tax base calculation is specific for each kind of vehicle.

2.5.4 Customs Duties

As a member of the EU, the Czech Republic follows EU Customs' legislation, including unified EU Customs Nomenclature and Tariff. Goods imported into the Czech Republic from third countries outside of the EU are subject to import customs duties and import VAT (unless those goods are specifically exempted from

customs duty and import VAT). Customs duty may also be fully or partially reduced based on either a bilateral (based upon agreements on customs preferences concluded by the EU) or unilateral basis (based on the EU customs preferences addressed to developing countries).

Imported and exported goods can also be subject to other non-tariff measurements restricting import/export, such as import/export licenses and quotas and veterinary inspections.

2.6 Other obligations

2.6.1 Electronic reporting system

With effective date of December 1, 2016 the Electronic Sales Reporting System (known under the Czech abbreviation "EET") was introduced in the Czech Republic.

Under this system, certain entrepreneurs (legal entities and individuals) who are paid for their goods or services in cash, checks, bills of exchange or similar payment means (e.g. gift cards, meal vouchers, tokens, etc.) are obliged to report the concerned payments in this EET system.

The EET system is going to be introduced in the Czech Republic in 4 phases:

- (1) As of the 1st of December 2016, EET applies to entrepreneurs in the accommodation, restaurant and catering businesses;
- (2) As of the 1st of March 2017, EET will apply to entrepreneurs in retail and wholesale businesses;
- (3) As of the 1st of March 2018, EET was supposed to apply to entrepreneurs in other businesses/activities (e.g. transportation services, lawyers, doctors) except those activities mentioned below under phase 4.
- (4) As of the 1st of June 2018, EET was supposed to apply to entrepreneurs in selected craft and manufacturing businesses (e.g. production of textile or clothing, woodworking, manufacturing of various products).

Recently, the phases mentioned under numbers 3 and 4 were cancelled and the introduction of the EET system for those entrepreneurs will be postponed. The time frame is not yet known.

EET imposes a duty on every relevant seller or service provider to buy electronic cash registers, connect to a cash register network and send information about each transaction (realized cash, cards, checks, bills of exchange or similar payment means) to the respective local Financial administration body.

2.7 Accounting, Auditing and Publication Requirements

2.7.1 Accounting Standards

All Czech business entities, as well as any Czech branches of foreign entities, individuals registered in the Commercial Register and individuals with an annual turnover exceeding CZK 25 million, are required to keep accounting records in accordance with Czech accounting statutory provisions. Furthermore, when an individual enters into an association with an individual or a legal entity which keeps accounting, then such new associated person(s) must also keep accounting records.

Special accounting regulations apply for banks, insurance companies and other financial institutions as well as for municipalities and other non-entrepreneurs. Small entrepreneurs/individuals are required to keep records only for tax purposes.

Accounts, as well as financial statements, must be principally kept in Czech local currency and in the Czech language. Assets and liabilities denominated in foreign currencies must also be recorded in those foreign currencies.

Czech companies issuing securities admitted for trading on regulated markets in the EU are also required to keep their books according to International Financial Reporting Standards (IFRS). Czech accounting standards currently differ from the IFRS in a number of aspects, including:

- Spare parts are treated as stock; they are not depreciated and the reduction in value is reflected in provisions on reduced value;
- Capitalization of interest relating to investments in assets is not obligatory (interest incurred until the asset is put into use may be treated as an operation expense);
- All leases are treated as operating leases and are recognized on the balance sheet; and
- Effect of change in accounting policy must be reflected in the accounting period when the change occurred and not as a prior year adjustment.

2.7.2 Financial Statements, Annual Report and Report of Control

Czech financial statements comprise the balance sheet, profit and loss account, explanatory notes, cash-flow statement and statement on changes in equity. Explanatory notes must include the following information, relevant for the particular accounting period:

- Information regarding assets, liabilities, financial position and economic results;
- Accounting policies, valuation methods and depreciation rates; and
- Explanation of changes in accounting policies and estimation methods, reasons for changes and effect of the financial position.

Individuals and legal entities subject to a statutory audit of financial statements also need to prepare their annual report. The annual report must include the following:

- Financial statements;
- Consolidated financial statements (if applicable);
- Auditor's report; and
- Commentary on the post balance sheet date events, on the projected future performance, on research and development activities, on acquisition of own shares, on employment and environmental matters and on foreign branches.

If a control agreement is not concluded between controlling and controlled entities, the controlled company must prepare a report on relationships between the controlling and controlled entities and on relationships between the controlled entity and other entities controlled by the same controlling entity. This report must be attached to the company's annual report.

2.7.3 Consolidated Accounts

Consolidated financial statements must be prepared by the controlling company or a company exercising substantial influence on the control or operation of another controlled company. Consolidated companies must adopt uniform and consistent accounting policies for the purpose of consolidation.

Consolidated financial statements must be prepared under IFRS, if the controlling company issued securities admitted for trading on a regulated market in the European Union. Other entities may opt to use IFRS as a basis for preparation of the consolidated financial statements.

Since the consolidated tax base has not been introduced, consolidated financial statements are used only for accounting purposes and not for tax purposes or for calculation of distributable profit.

2.7.4 Publication and Archiving of Records

An annual report must be published through a submission to the Collection of Records within 30 days of its authentication by the auditor and approval by the statutory body, but no later than the end of the following accounting period; if the annual report has not been audited by the end of the following accounting period, it must be noted in the filed annual report.

Accounting documents must be archived for the following minimum periods:

Type of Record	Period
Payroll Data for Pensions and Sick Payments	30 years
Financial Statements and Annual Reports	10 years
Payroll Registers	10 years
Tax documents for VAT purposes	10 years
Other	5 years

Nonetheless, since accounting documents are also normally relevant for tax purposes, the period for which documents are retained must also reflect whether a tax audit could be performed.

2.7.5 Audit Requirements

With some simplification, a statutory audit of the financial statements and annual report is required for companies and individuals keeping accounting where at least two of the following conditions are met for both the current and previous accounting period (for joint stock companies one of the following conditions must be met):

- Turnover exceeding CZK 80 million;
- Total gross value of assets exceeding CZK 40 million; and
- Average number of employees exceeding 50 persons.

For detailed information on Czech Republic taxation matters please contact:



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3. Labor/Employment Issues

In particular, the following considerations should be kept in mind when employing personnel in the Czech Republic:

3.1 Legal Framework

The Czech Labor Code, Act No. 262/2006 Coll. ("Code") effective as of 1 January 2007, is the principal legislative act governing employment relations in the Czech Republic. The Code reflects the achieved level of social and economic relationships in the Czech Republic and corresponds to international trends of employment law developments, including various concepts existing under EU labor law related Directives. Other relevant legislative acts include, in particular, the Act on Employment (Act No. 435/2004 Coll. as amended), the Act on Collective Bargaining (Act No. 2/1991 Coll. as amended) and a number of Decrees relating to the Code. The Czech Civil Code, Act No. 89/2012 Coll. ("Civil Code"), effective as of 1 January 2014, is also generally applicable to labor-law relationships.

Most of the provisions in the labor legislation are of a mandatory nature and safeguard the observance by employers of the most important principles, such as, *inter alia*, the principle of equal treatment and the prohibition of discrimination. On the other hand, the Code respects the principle of contractual freedom of the parties and thus employment relations may be varied by the provisions of the relevant employment agreement, provided that the above principles, as well as basic rights and working conditions of the employees as set forth in the Code, are observed. For example, termination provisions which differ from those specified in the Code, and which are less favorable to the employee, would generally not be enforceable.

3.2 Basic Relationships

The Code defines the subject of labor relationships as "fulfillment of dependent (subordinated) work". Under the Code, such labor relationships generally arise between employees and employers in the private sector:

- within an employment relationship, on the basis of an employment agreement (in Czech "*pracovní smlouva*"); or
- outside an employment relationship, on the basis of (i) an agreement for performance of a specific work assignment (in Czech "*dohoda o provedení práce*") or (ii) an agreement on work activity (in Czech "*dohoda o pracovní činnosti*").

A labor relationship may only be created with the consent of an individual and an employer.

3.3 Key Employment Conditions in an Employment Relationship

Written form - An employment agreement must be in writing.

Probationary period - The employment agreement may include a probationary period of up to three consecutive months following the date of commencement of the employment relationship or, in the case of management employees, up to six consecutive months following the date of commencement of the employment relationship. The probationary period may not be more than one half of the length of the employment relationship, if the employment relationship is agreed for a definite period of time.

Working hours - The length of normal weekly working hours may not exceed 40 hours per week. However, there are exceptions in the length of normal weekly working hours as follows:

- (i) Employees who work underground on extraction of coal, ores or non-metallic raw materials, or on construction of mine-works or who are engaged in geological prospecting on mining sites, may not exceed 37.5 hours per week;
- (ii) Employees who are on a three-shift or continuous work schedule may not exceed 37.5 hours per week;
- (iii) Employees who are on a two-shift work schedule may not exceed 38.75 hours per week;
- (iv) Employees who are under the age of 18 years may not exceed 8 hours per shift and, in total from all employment relationships, may not exceed 40 hours per week.

Vacation - The basic vacation period is at least 4 (four) weeks per calendar year. During the vacation period, the employee is entitled to receive compensation in the amount of his/her average earnings.

Remuneration – Since 1 January 2019 the minimum monthly salary in the Czech Republic is CZK 13,350 per month or CZK 79.80 per hour, and this amount may be amended by the Government. The amount of the minimum salary can be proportionally decreased for part-time employees. In addition to the minimum salary, the Czech Labor Code recognizes the “guaranteed salary”. There are 8 levels of guaranteed salary, depending on the complexity, responsibility and difficulty of work performed. The lowest level of the guaranteed salary corresponds to the minimum salary.

3.4 Employment of Czech Nationals

Czech law and, in particular, the Code, shall generally apply to employment relationships between Czech legal entities or foreign legal entities having a Czech branch and their employees in the Czech Republic. An employment relationship between a Czech branch office of a foreign legal entity and its Czech employees in the Czech Republic may be governed by other than Czech law, if so agreed between the employer and the employee. There are, however, some provisions of labor as well as public laws that are always applied by Czech courts or other authorities, regardless of the choice of law clause, to protect public order and good morale, e.g. the prohibition of discrimination, safety and protection of health at work, safety regulations, etc. Provisions of the Code are generally less flexible and more protective of the employee than is commonly the case outside EU countries (e.g. the United States).

For example, under the Code an employer is very limited in its ability to terminate the employment relationships of its employees without cause. An employment relationship of an employee may be terminated for cause with immediate effect, if the employee intentionally commits a certain crime or breaches his/her obligations related to his/her employment relationship in an especially gross manner (e.g. is intoxicated on the job, steals company property, etc.). An employment relationship of an employee may be terminated for cause, generally with a two-month notice period, if for example:

- the employee, after an official written warning, fails within a certain period of time to satisfactorily carry out his/her work obligations or assignments, or fulfill other employment obligations; or
- the employee materially breaches his/her obligations related to his/her employment relationship, or the employee repeatedly breaches his/her obligations related to his/her employment relationship in a less significant manner, provided that the employee received a written warning; or
- the employee loses qualifications which are necessary for carrying out his/her work; or

- the employee's health condition does not permit him/her to carry out his/her work; or
- the employee breaches legal terms of their sick leave in an especially gross manner.

An employment relationship may also be terminated by the employer:

- (i) for redundancy reasons,
- (ii) due to relocation or cancellation of the employer or its part, or
- (iii) during the probationary period, without stating a reason.

The employee's trade union, if any has been established, would have to be consulted about the termination of an employee by termination notice or immediate cancellation of employment (but not in the case of agreement, with some exceptions). In specific situations the consent with the termination by notice or immediate cancellation of employment may be required.

A severance payment is applicable in the case of termination of the employment relationship due to redundancy, relocation or cancellation of the employer or its part, this severance payment is equal to at least:

- 1 multiple of the employee's average monthly earnings, if the employment relationship with the employer lasted less than 1 year;
- 2 multiples of the employee's average monthly earnings, if the employment relationship with the employer lasted at least 1 year, but less than 2 years;
- 3 multiples of the employee's average monthly earnings, if the employment relationship with the employer lasted 2 or more years,

unless a higher severance payment has been agreed upon in the collective agreement, or if so set forth by the internal regulations of the employer, or otherwise agreed between the parties.

A substantially higher severance payment is applicable in the case of termination of the employment relationship due to work related injury or sickness, or threat of work related sickness, and this is equal to at least 12 multiples of the employee's average monthly earnings.

3.4.1 Employee Representatives

Employees have the right to information and consultation. The employer is required to discuss with an employee (or the employee representatives, if established) certain specified topics and to provide the employee with certain types of information. Special consultation and information duties are stipulated by the Code.

There are three types of employee representatives:

- (i) Trade union,
- (ii) Works council, and
- (iii) Representative of employees for safety and the protection of health at work.

3.4.2 Collective Agreements

The process of collective bargaining is governed by the Act on Collective Bargaining. Collective agreements regulate the relationship between the employer and trade unions and rights of employees; in particular,

wages and other labor entitlements. Rights which individual employees acquire through collective agreements are treated the same as other employee rights arising out of the employee's employment relationship. The trade union shall also conclude a collective agreement on behalf of employees who are not trade union members.

3.5 Expatriate Personnel Working in the Czech Republic

3.5.1 Work Permits and Residence Visas/Permits

(a) Foreign Employee - a Citizen of any EU Member State

A work permit is not required; however, a notification duty applies for the employer or the recipient person. Any employer who employs a foreign employee (a citizen of any EU member state) within the territory of the Czech Republic, or any person (recipient) who accepts assignment of a foreign employee (a citizen of any EU member state) within the territory of the Czech Republic, is obligated to notify the respective regional branch of the Labor Authority in writing on:

- employment/assignment of the foreign employee – the notification duty must be fulfilled on the day of commencement of work by the foreign employee, at the latest; and
- termination of the employment/assignment of the foreign employee – the notification duty must be fulfilled within 10 calendar days from termination of the employment/assignment, at the latest.

Such foreigners also have to register their stay with the Police (with some exceptions). A visa is not required for the purpose of performing employment activities within the territory of the Czech Republic.

(b) Foreign Employee - a Citizen of any country other than an EU Member State

In general, the employee is required to obtain a single residence permit for the purpose of employment (so-called "Employee Card") before the commencement of employment within the territory of the Czech Republic (certain exemptions are available, e.g. in the case of relatives of citizens of EU member countries or experts). For positions requiring high qualifications a Blue Card, which serves as both residence and work permit, may be issued to foreign employees.

A special type of permit is applicable in case of an intra-group secondment of employees.

A work/residency permit is not required if the employee is a student who follows a regular study program duly accredited in the Czech Republic in order to prepare for his/her future employment, or if the employee is not to be performing work within the territory of the Czech Republic for more than any 7 (seven) consecutive calendar days or in total 30 (thirty) days in a calendar year, provided that the employee is at the same time a:

- performer (performing artist), pedagogical worker, academic worker of a University;
- scientific, research or development worker, who is a participant of a scientific meeting;
- pupil or student up to 26 years of age;
- sportsperson; or
- person providing goods delivery or services within the territory of the Czech Republic or delivering such goods or providing installation, guarantee or repair services under a business agreement.

In addition, certain exceptions or special treatment may apply based on international treaties concluded between the Czech Republic and a respective country.

Non-EU citizens have to register their stay with the Police (with some exceptions). It is necessary to point out that the procedure to obtain an Employee Card or Blue Card is very administratively demanding and time consuming.

There are certain other immigration alternatives, for example for experts, applicants for asylum.

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4. Real Estate

4.1 Changes Resulting from the New Legal Regulation

Czech real property law has been affected by a significant change - namely as a result of Act No. 89/2012 Coll., the Civil Code (hereinafter referred to as the "Civil Code") which entered into legal effect on January 1, 2014. Consequently, a number of previously applicable acts were repealed - including, but not limited to, the former Civil Code, the Act on Lease and Sublease of Non-residential Premises, the Act on Cadastral Register and the Act on Registration of Ownership and Other Rights *In Rem*. Legal regulations are currently contained, *inter alia*, in the Civil Code and the new Act No. 256/2013 Coll., on Cadastral Register. The most significant changes brought about by the new legal regulations are set out below.

4.2 Definition of Real Property under Czech Law

Czech law defines real property as including both tangible and intangible things (i.e. rights) as follows:

- land plots;
- underground structures (if designated for a specific purpose);
- rights *in rem* to the above; and
- other rights stipulated by law.

The Civil Code also specifically designates apartments (as things in a legal sense) as being part of real property. All other assets, unless explicitly provided for otherwise by a special legal regulation, are not considered real property under Czech law.

Under Czech law, the principle of "*superficies solo cedit*", which treats each plot of land and anything built upon it as a single object of real property, has not applied since 1964. As a result, a construction located on a plot of land did not form part of such a plot of land. Therefore, it was possible that an owner of a plot of land was not the same legal or physical person as the owner of a construction built on that same plot of land.

However, the aforementioned principle "*superficies solo cedit*" has been re-introduced into Czech law by the Civil Code. It explicitly sets forth that the following items shall be understood as part of a land plot:

- the space below and above the surface of the land plot;
- constructions built on it and other equipment (excluding temporary constructions); and
- plants growing on it.

Connections to utilities and related pipes (e.g. sewerage or water) are not part of a land plot.

In order to achieve application of the above principle in practice, certain temporarily applicable provisions have been introduced by the Civil Code. Basically, where the owner of a land plot and the owner of a construction built thereon were the same as of January 1, 2014, the construction, as a separate thing, ceased to exist (i.e. became part of the land plot) and the owner of the land plot now owns solely the land plot, comprising also the construction as a part of such a land plot. In all other instances, both the land plot and the construction continue to be separate things (i.e. the construction has not become a part of the plot of land) and both the land owner and the construction owner have a pre-emption right with regard to the transfer of ownership of either the plot of land or the construction until the ownership is unified in the

hands of the same person. An additional pre-emption right applies with respect to co-owned real property; the co-owners of such real property have a pre-emption right concerning any transfer of an ownership interest in such co-owned real property, save for transfer between related persons.

In cases not covered by the construction right (see below), a construction newly constructed on a land plot by a person different from the owner of the land plot (constructor) at his/her own cost comes, by virtue of law, into the ownership of the owner of the land plot. The owner of the land plot is then required to reimburse the reasonably incurred costs to the constructor, provided the construction was performed by such a constructor in good faith. The owner of the land plot may also ask the court, provided that the constructor was not entitled to perform the construction of the land plot, to decide that such a construction shall be demolished and the land plot shall be returned to its former state and that the constructor shall bear all costs associated therewith. The constructor may require the owner of the land plot to transfer the ownership of the land plot to him/her for a price usual in terms of place and time, provided that the constructor performed the construction in good faith and that the owner of the land plot was aware of the construction taking place and did not prohibit it without undue delay. The owner of the land plot is also entitled to ask the constructor to purchase the land plot. Furthermore, either party may ask the court to decide that the constructor shall gain ownership rights to the land plot and pay a consideration in return.

Should someone use someone else's material to build a construction on his/her own plot of land, the construction becomes part of the plot of land; however, the owner of the land plot shall reimburse the value of the material to its owner.

Should a small part of a construction built on a constructor's own land plot reach onto another person's land plot, the constructor becomes, by virtue of law, the owner of such small part of the relevant land plot, provided that the constructor performed the construction in good faith; the usual price of the small part of a land plot acquired in this manner shall be reimbursed to its former owner.

4.3 Cadastral Register

Real property in the Czech Republic is subject to registration in the Cadastral Register. This Register comprises, *inter alia*, the following items:

- land plots;
- constructions, unless they are already forming part of the land plot, or of the construction right (see below); and
- apartments (as things in a legal sense).

The Cadastral Register is a public record of certain rights to real property including, *inter alia*,

- ownership right;
- mortgage;
- easements;
- pre-emption right;
- construction right (see below); and
- lease.

Newly, leases may be recorded in the Cadastral Register, provided the owner of the real property in question asks for such registration, or gives his/her consent therewith.

The Cadastral Register also contains a Collection of Documents, which includes decisions of public authorities, agreements and other deeds, based on which the record in the Cadastral Register was made. The Cadastral Register is publicly accessible; anyone is entitled to access it in order to make extracts, copies and notes. Limited fees are payable.

The records in the Cadastral Register are presumed to be correct, but should they not be in line with the factual state, the person claiming their non-correctness may require the respective record to be remedied; although, at the same time, such a person generally has to claim his/her right at court.

4.4 Owners of Real Property

Under Czech law, every individual and legal entity enjoys the same right of ownership of real property. The same applies to foreign citizens and foreign legal entities, both from within the European Union and outside the European Union. All formerly applicable restrictions on acquisition of real property by such persons have been removed.

4.5 Transfers of Real Property

In order to transfer ownership title to real property, the following formal requirements and procedures must be met and followed:

- An agreement on the transfer of real property must be made in writing. Signatures of the transferor and the transferee must be affixed in the same document and must be officially verified.
- The transfer agreement must contain a description of the real property to be transferred. For real property that is subject to registration, this will be the information recorded at the Cadastral Register. For other real property not subject to registration, as detailed a description as possible is required.
- The transfer of real property that is subject to registration becomes effective on the date of registration of the new owner in the Cadastral Register. However, the transfer is also effective retroactively as of the date of filing of the application for registration with the respective Cadastral Office. A transfer of real property that is not subject to registration becomes effective on the effective date of the relevant transfer agreement. Since January 1, 2012 a new formal procedure has applied with respect to applications for registration with the Cadastral Register and standardized forms are used.

The newly introduced concepts of real property law include the possibility to acquire ownership of real property from a putative owner under the following circumstances.

In the case of real property registered in the Cadastral Register, if an entry in the Cadastral Register is not in accordance with the factual situation, such an entry shall be construed in favor of the person acquiring ownership from a transferor entitled to transfer ownership to the real property in question, based on an entry in the Cadastral Register. With regard to the previously existing entries in the Cadastral Register, the above rule of material publicity of the Cadastral Register, i.e. the good faith in the entries made therein, applies as of 1 January 2015. This rule, however, applies only in case of acquisition of real property against monetary consideration and only if the acquirer is in good faith concerning the entitlement of the transferor to transfer the real property. The moment in time when the good faith of the acquirer is relevant is the time of filing the application for entry of the acquirer as the new owner into the Cadastral Register.

In case of real property not registered in the Cadastral Register, the acquirer may acquire the ownership right thereto from the putative owner only if the acquirer is in good faith concerning the entitlement of the transferor to transfer the real property based on a perfect legal title and provided that the real property is acquired (i) in a public auction; (ii) from an entrepreneur within his/her entrepreneurial activity within common business relations; (iii) for consideration from a person to whom the real property had been entrusted; or (iv) from an unauthorized heir to whom the inheritance had been confirmed.

4.6 Rights to Real Property Owned by a Third Party (*iura in re aliena*)

Czech law recognizes the following third party real property rights:

- Construction right;
- Easements;
- Mortgages; and
- Pre-emptive rights.

Construction right entitles its owner to have a construction on a plot of land that belongs to another person and may be established only for a limited period of time, not exceeding 99 years. This right may relate to a construction that is yet to be built or to an already existing one; such a construction becomes a part of the construction right itself and the owner of the right has, with regard to the construction, the same rights as an owner. It may be established by means of an agreement, *usucapio* or by a decision of a competent authority based on a legal provision and has to be entered into the Cadastral Register. The construction right is both transferable and may be encumbered and passes onto the legal successor of its owner.

Easements include easements (in the strict sense) which impose restrictions on owners of real property in favor of another person (i.e. owners are obligated to refrain from and/or bear any activity) and *servitutes* which are connected with a duty of owners of real property to act (i.e. owners are obligated to perform something for the benefit of the beneficiary, or to provide something to the beneficiary). The beneficiary of an easement is either an owner of another real property asset (an easement *in rem*), or a specific individual/legal entity (an easement *in personam*). Obligations arising under an easement pass to the new owners of an encumbered real property asset.

Czech law recognizes several ways to establish an easement, including by written agreement of the parties, or as a result of *usucapio*. An easement right encumbering registered real property as a result of an agreement comes into existence, however, only through its registration in the Cadastral Register.

Easements may be terminated in the following ways:

- By agreement of the parties.

The parties may agree on the termination of an easement. A record in the Cadastral Register is required for the easement to cease to exist. Parties may also agree to limit the easement *in personam* in such a way that it ceases to exist upon the beneficiary having reached a certain age;

- By operation of law.

An easement is terminated by operation of law if the burdened real property can no longer serve the beneficiary or the real property of the beneficiary;

- By a decision of a state authority.

A court may terminate (or limit) an easement if, due to a change in circumstances, there is a material discrepancy between the restrictions imposed on the owner of the burdened real property and the benefit afforded to the benefiting real property or individual beneficiary; and

- By death or dissolution of the beneficiary.

If the beneficiary is defined as a specific individual or entity (easement *in personam*), the easement is terminated upon the individual's death (however, upon its establishment, the easement may also be extended to the heirs) or the entity's dissolution. These easements generally do not pass to legal successors of the beneficiary. If the easement serves for the benefit of a certain enterprise, it does not cease to exist upon transfer of the enterprise or its part that will be run as an independent enterprise.

Apart from easements, as such, the law contains a large number of restrictions imposed on an owner of land. These restrictions include, by way of example, an owner's duty to allow the owner of neighboring land and buildings to enter its property in order to carry out maintenance and repairs and also in the extent necessary to farm on the land. Similar duties to allow entry are set forth, for instance, in mining regulations, laws for protection of landscape and environment, and telecommunications and energy regulations. Save for rare exceptions, such restrictions are not, however, subject to registration in the Cadastral Register.

As to mortgages, under Czech law a mortgage is used to secure a debt obligation. If a debtor fails to perform such obligation, the secured creditor is entitled to satisfy its claim by foreclosing on the mortgaged asset. A mortgage secures the relevant claim and its appurtenances; if specifically agreed by the parties, it also secures the claim for a contractual penalty related thereto.

Both monetary and non-monetary claims may be secured by a mortgage. The mortgage encompasses the asset and any appurtenances thereto. A mortgage may, *inter alia*, be created for a specific period, to secure a claim up to a particular amount and for a particular type of claim which will arise in the specified future. A mortgage may further secure future or conditional claims.

Mortgages may be created by a mortgage agreement, by means of testament or an agreement of heirs, by a court or administrative order, or by operation of law. Mortgages established on the basis of an agreement come into existence upon their registration in the Cadastral Register (provided that the real property is subject to registration).

In order to create a mortgage by agreement, the creditor and mortgagor must enter into a written agreement. A mortgage relating to real property registered in the Cadastral Register originates only upon its entry into the Cadastral Register. With regard to real property not subject to registration in the Cadastral Register, the mortgage agreement must be drawn up in the form of a public deed with the mortgage subsequently originating upon its entry into the Lien Register, which is performed by a notary. The object of the mortgage agreement and the claim being secured must be sufficiently identified, including the identity of the debtor (if it is a different entity from the mortgagor).

The Civil Code does not specify any other information which must be included in the mortgage agreement with respect to the identity and nature of a claim. However, the claim must be identified clearly and sufficiently. Therefore, a fixed amount and a fixed period (although clearly helpful and desirable) are not necessary if there exists another method which can sufficiently identify a particular claim (e.g. by reference to a contract).

If a single asset is subject to several mortgages, the mortgage that was first made must, on foreclosure, be first satisfied, unless the law specifies otherwise. The time that a mortgage was created is decisive for

determining priority, even if the mortgage was created to secure a future or conditional debt. In case of a mortgage over real property registered in the Cadastral Register, the decisive date is the date of filing the respective application for entering the mortgage into the Cadastral Register. In addition, it is possible for multiple creditors to agree in writing on a different priority of individual mortgages encumbering one real property, but such agreement becomes effective towards third parties only upon its registration in the Cadastral Register or the Lien Register. If such agreement limits rights of a creditor who is not a party to it, such agreement does not have any effect with regard to such creditor. Under certain circumstances, upon mortgagor's request, an already existing mortgage may be replaced in its ranking by a new one, provided that the existing one will be deleted within one year from registration of the new one.

It is also possible to create a mortgage encumbering real property that is not yet owned by the mortgagor; in this case, it is created upon the mortgagor obtaining the ownership right thereto. If such real property is registered in the Cadastral Register or the Lien Register, the mortgage may be entered into such register only with the current owner's consent.

The Civil Code enables prohibition of the creation of a mortgage encumbering a specific property; however, such an arrangement only becomes effective towards a third party upon its registration in the Cadastral Register or the Lien Register, or provided that such an arrangement had been known to the relevant third party.

A mortgagee may make use of mortgaged real property only with the express consent of the mortgagor. A mortgagee who has an encumbered real property asset in his/her custody must take due care of the asset and if he/she incurs expenses as a consequence thereof, he/she is entitled to compensation from the mortgagor for such expenses. The mortgagee may not take any action which would impair the value of the encumbered asset to the detriment of the mortgagor. In the event of damage, loss or destruction, the mortgagee is liable for damages to the mortgagor.

If the market value of the encumbered asset decreases to such an extent that security for the debt becomes insufficient, the mortgagee may require the debtor promptly to provide additional adequate collateral. If the mortgagor fails to deliver such additional security, that portion of the debt which is not secured immediately matures.

If a secured claim is not duly and timely satisfied, the mortgagee may foreclose against the encumbered real property asset. If several different assets are encumbered to secure one claim, the mortgagee is entitled to seek satisfaction of its claim, or a part of it, by foreclosure against any of the encumbered real property assets or all of them.

Two basic methods of foreclosure against a mortgaged real property asset exist: (i) a public auction, or (ii) a forced sale organized in accordance with other legal regulation. The parties may also agree on an alternative way of satisfying the creditor in writing.

4.7 Zoning Plan and Planning Permission, Building and Use Permits

Czech law generally requires planning and building permits for any property development. Any use of the development, when completed, must then be additionally approved by a building-use permit. Any and all permits under the preceding sentence are issued by the competent Building Office (mostly in cooperation with other public authorities – see below).

A planning permit, as a first stage permit, may be obtained only if the application for such a planning permit (i.e. the development project) complies with an approved urban study or zoning plan. If an urban study/zoning plan is not consistent with the intended development project, a change to the urban study/zoning plan is possible. However, this procedure is likely to be rather time-consuming.

The approval process for a planning permit can be extremely complex and protracted, since a number of public authorities may be involved; these include the Fire Department, the Department of Hygiene, the Heritage Protection Office, the Chief Architect's Office, the Transport Department, the Environmental Office and others.

Instead of a planning permit, a planning approval (i.e. a simplified form of the planning permit) is issued in certain straightforward cases.

For construction works, a building permit must generally be obtained. A building permit is required not only for new development, but also for major reconstructions and renovations or alterations. Application for a building permit must be in compliance with the prior planning permit.

Instead of a building permit, a notification of the construction intention to the Building Office followed by consent with realization of the notified construction intention (i.e. a simplified form of a permit authorizing construction works) by the relevant Building Office is sufficient in certain straightforward cases.

In the case that both the application for a planning approval and notification of the construction intention is filed, the Building Office issues a so-called aggregate approval, i.e. planning approval along with the consent with realization of the notified construction intention.

After completion of the construction works, a building-use permit (or a building-use approval) must be obtained.

For the entire duration of the development, its owner shall keep a set of certified project documentation consistent with the actual implementation of the construction and issued permits. In cases where the project documentation has not been procured, the owner of the development shall procure "as-built" record drawings. Upon transfer of ownership of the development, the documentation shall be handed over to the new owner.

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5. Environmental Protection

Czech regulations governing the protection of the environment are analogous to those prevailing in EU countries. As a result, any person exploiting natural resources, developing projects, building or removing structures, including residential projects, logistic centers, office and retail parks, or introducing production and manufacturing processes, products or materials into the Czech Republic, is required to carry out such activities in compliance with applicable environmental protection legislation. This means, in the first instance, obtaining the respective permits related, for example, to establishing and operating air pollution sources, water treatment facilities, waste and chemical substances treatment, as well as complying with the conditions set out in the permits.

Czech legislation also requires that projects of a certain type and size, or projects that may have significant impact on the environment, be carried out only after an environmental impact study is completed and the requisite licenses under the **Integrated Pollution Prevention and Control** rules (Act No. 76/2002 Coll.) have been obtained (if applicable).

The **treatment, transport and disposal of waste** are primarily regulated in Act No. 185/2001 Coll., on Waste, including the treatment of dangerous waste, oils, batteries, accumulators, PCB, asbestos, etc. The Czech Act on Waste and related regulations also transpose into Czech law EU Directive No. 2012/19/EU, on Waste Electrical and Electronic Equipment (WEEE) and EU Directive No. 2011/65/EU, on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS). The WEEE rules relating to the obligations of manufacturers and importers with respect to labeling, collection and recycling of electrical and electronic waste, including providing for financial guarantee and registration with the Ministry of Environment, came into effect in the Czech Republic in 2005. An amendment to the Czech Act on Waste that became legally effective in October 2014 established the duty of certain foreign entities introducing electrical and electronic equipment onto the Czech market, to nominate a designated representative with regard to WEEE; this representative may only be a corporation or an entrepreneur-natural person seated in the Czech Republic.

In relation to pollution control, subject to certain special conditions regulated in applicable laws, the principle of **"the polluter pays"** is generally applied to cases of water, groundwater and soil contamination, as well as to other impairment of different elements of the environment (air, forests, fauna and flora). The foregoing reflects the fact that, under Czech law, environmental liability has generally the same features and is generally based on the same principles as liability for damages regulated in the Civil Code. Given the foregoing, implementation of EU Environmental Liability Directive 2004/35/EC, which was implemented into Czech legislation by Act No. 167/2008 Coll., Act on the Prevention and Remedying of Environmental Damage, did not bring major changes to the regulation of environmental liability in the Czech Republic. In fact, the said Directive is based on the same "polluter pays" principle, which has been further enhanced after implementation into Czech legislation. Nowadays, certain industrial operators are imposed strict liability for environmental damage caused by their operations and have to provide financial guarantee for costs that may be incurred in case of environmental damage of a worst case scenario.

As regards recent developments, three new relevant acts were adopted in 2012: (i) Act No. 85/2012 Coll., on Carbon Capture and Storage (Act on CCS), (ii) Act No. 201/2012 Coll., on Atmosphere Protection (Act on AP) and (iii) Act No. 165/2012 Coll., on Supported Energy Resources (Act on SER). In addition, a new **Nuclear Act** No. 263/2016 Coll. became legally effective on 1 January 2017. The former Act No. 18/1997 Coll. remains formally in force, but its major part has been repealed. Further, the introduction of a new act on waste and of a separate act on end-of-life products have been contemplated for a couple of years, however, the new draft bills are yet to be made publicly available.

The **Act on CCS** provides for new opportunities within the Central European Area for CCS projects, the storage sites being considered the most are aquifers (in Northern Bohemia) and depleted oil fields and flammable natural gas fields (in Southern Moravia). However, the storage cannot be permitted in the area of the Czech Republic until 1 January 2020, so the Act on CCS at the moment merely indicates the conditions under which it will be possible to capture and store carbon dioxide into underground rock formations in the future.

On the other hand, the new **Act on AP** brought several immediately effective changes reducing administrative procedures, such as the limitation of polluting substances, and cancelling pollution fees in amounts smaller than CZK 50,000. In addition to that, the municipalities gained a new authority to establish "low-emission areas" under certain circumstances. These areas fall under a stricter pollution regime, for example, entry can be permitted only to vehicles complying with specified pollution limits. As of 2019 and 2020, certain rules concerning the required decrease in greenhouse gas emissions from motor gasoline and diesel fuel will change to reflect corresponding legal instruments on an EU level.

The **Act on SER** promotes electricity and heat production from renewable and secondary energy sources and also supports the usage of biogas in cogeneration of electricity and heat. According to the Act on SER, certain bonuses may be granted to decentralized electricity producers (such as solar panels on roofs or small wind turbines).

A special category of environmental harm is also recognized under Czech law in relation to privatization projects and acquisition of state property by private investors, according to Act No. 92/1991 Coll., **Privatization Act**. In some privatization projects, the Government may decide that an Indemnity Agreement must be concluded by the Ministry of Finance (before 1 January 2006, known as the National Property Fund) with the private acquirer of privatized assets. As a result, the acquirer is indemnified by the Ministry of Finance for costs (up to the limit contained in the relevant Indemnity Agreement) sensibly expended in connection with the settlement of environmental liabilities occurring prior to privatization. The scope of remediation works is stipulated by the Czech Environmental Inspection on the basis of a special audit carried out with respect to the affected site.

Furthermore, the EU Emissions Trading Scheme (ETS) is implemented by the **Act on Conditions of Greenhouse Gas Emissions Allowances Trading** No. 383/2012 Coll. (former Act No. 695/2004 Coll. remains formally in force, but its major part was repealed). Under certain circumstances, until 2020, some of the allowances may still be allocated free of charge; in remaining instances, and as a default rule, they are auctioned. Earnings from allowances auctions represent income of the state budget and, unless provided otherwise by law, they shall be used for the financing of activities leading to a decrease in greenhouse gas emissions, support of industrial innovations and measures aimed at increasing the energy efficiency of buildings, etc.

Lastly, EU regulation No 1907/2006/EC, on Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) affecting around 1,000 chemical substances, and requiring their registration, evaluation and authorization with the European Chemical Agency applies directly in the Czech Republic and is, in terms of sanctions, complemented by Act No. 350/2011 Coll., the **Chemical Act**. In 2015, a substantial part of the Chemical Act related to classification, packaging and labelling of chemicals, was repealed and, generally, only the rules under EU regulation No. 1272/2008/EC on Classification, Labelling and Packaging of Substances and Mixtures (CLP) apply. A New **Act on Biocides** No. 324/2016 Coll. in line with respective EU legislation was adopted in 2016.

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6. Competition Rules

The purpose of Czech competition legislation is to protect economic competition from prevention, restriction and other distortion. Competition laws apply to any activity or conduct which has, or may have, an effect on the Czech market, including transactions that take place outside of the Czech Republic, if such activity materially affects the domestic Czech market.

The Act on the Protection of Economic Competition ("Competition Act") further applies to investigation and proceedings of the Czech authorities under Article 101 and 102 of the TFEU and to some aspects of cooperation with the European Commission and other EU authorities. Competition laws apply both to individuals and legal entities (or associations thereof) provided that they, whether or not entrepreneurs, take part in competition by engaging in economic activity or may influence competition by their activities.

In general, anti-monopoly legislation prohibits each of the following activities.

- (i) Agreements that restrict economic competition. Such agreements include horizontal agreements (agreements between competitors on the same level of the supply chain) as well as vertical agreements (agreements between competitors on upstream/downstream markets). Anticompetitive horizontal agreements typically include: agreements on price fixing, production limitation agreements, agreements to restrict market access of other competitors, divisions of the market as regards territory and/or customer groups and tying agreements. Agreements that result or may result in the distortion of competition are prohibited unless exempted by the Competition Act (such as (i) agreements falling within the scope of European Community block exemption regulations, such as certain vertical agreements, research and development agreements, agreements on transfer of technologies, insurance contracts, consultation of passenger tariffs and slot allocation at airports, contracts on the distribution and service of motor vehicles, and, finally (iii) agreements fulfilling conditions of an individual exemption where pro-competitive effect outweigh negative effects on competition). Certain agreements are considered not to appreciably restrict competition, such as agreements where the combined share on the relevant market does not exceed 10% for horizontal and 15% for vertical agreements. Such *de-minimis* agreements, unless they include hard-core restrictions, therefore do not infringe competition.
- (ii) Abuse of dominant position. Common examples of abuse of dominant market position include: enforcement of unfair conditions, conditioning the conclusion of contracts on acceptance of supplementary performance, dissimilar conditions to equivalent transactions, limitation of production to the detriment of consumers, offer and sale of goods for unfairly low prices and refusal to grant access to distribution networks or other infrastructures where competitors are unable to compete without such access. An undertaking is considered to have a dominant position on a relevant market if its market power enables it to behave, to a significant extent, independently of other undertakings or consumers. In this regard, an undertaking whose market share of any given product or services is below 40% is not deemed to have a dominant position in that product or services market. However, above 50% market share implies a general presumption of dominance. If the Office for Protection of Economic Competition (OEC) discovers that an abuse of dominant position has occurred, it declares such fact by a decision, prohibits such action in the future and fines the dominant undertaking.
- (iii) Concentration of competitors not approved by the OEC. Approval of the OEC is required for any merger, consolidation or acquisition where: (i) aggregate domestic turnover in the last accounting period of the concerned undertakings in the Czech Republic exceeds CZK 1.5 billion and at least two of the concerned undertakings reached an individual domestic turnover in the Czech Republic exceeding CZK 250 million, or (ii) domestic turnover reached by 1) at least one of the merged

undertakings, or 2) the acquired undertaking or its part, or 3) the acquired business, or 4) at least one entity forming the joint venture in the last accounting period in Czech Republic, exceeds CZK 1.5 billion and worldwide turnover reached by another concerned undertaking exceeds CZK 1.5 billion. In this regard, the OEC has the authority to approve a concentration if the applicants are able to prove that the transaction does not create a significant impediment to effective competition, especially through creating or strengthening the dominant position of a concerned undertaking. The transaction may not be implemented before OEC approval is obtained. In share acquisition transactions, for example, unless specifically approved by the OEC, the acquirer may not exercise control over the acquired entity.

6.1 Sanctions

The OEC may impose fines on competitors of up to 10% of the worldwide turnover in the preceding calendar year where the Competition Act has been breached. If no mandatory notification was made, the OEC will also impose remedial measures, such as the divestment of the acquired shares or business to the original owner.

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7. Product Safety & Consumer Protection

7.1 General Regulations

General product safety rules are regulated in the Czech Republic by Act No. 102/2001, on General Product Safety ("GPS Act"), which came into effect on 1 July 2001. The GPS Act effectively incorporated into Czech legislation the substance of regulations contained in the EU General Product Safety Directive 2001/95/EC ("GPSD").

The GPS Act applies to all products intended for consumer use if it is reasonably foreseeable that those products will be used by consumers. The GPS Act imposes a general duty upon producers to only market safe products. A product is considered 'safe' under the GPS Act if its qualities meet the requirements as set forth in applicable EU or national technical norms. In addition to the manufacturer's obligations, the GPS Act stipulates that distributors may not market a product if they are aware, or may expect on the basis of their information and professional knowledge, that a particular product does not meet the relevant product safety requirements.

7.2 Special Categories of Products

In addition to the general regulations in the GPS Act, which transpose the provisions of the GPSD, there are a number of special product safety regulations in force in the Czech Republic relating to specific types of products (examples of such specific regulations are provided in the form of a list in the GPS Act) including, inter alia, the following:

Category of Products	Relevant Law	Supervising Authority
Products which are likely to pose a danger to public health and/or safety, property, the environment or other public interests	Act No. 22/1997 Coll.	Czech Trade Inspection or other authority as stipulated in a special law
Pharmaceuticals	Act No. 378/2007 Coll.	State Institute for Drug Control, Institute for State Control of Veterinary Bio preparation and Pharmaceuticals
Medical Devices	Act No. 268/2014 Coll.	State Institute for Drug Control, Ministry of Health
Food and Tobacco Products	Act No. 110/1997 Coll.	Czech Agriculture and Food Inspection Authority
Fodders	Act No. 91/1996 Coll.	Central Institute for Supervising and Testing in Agriculture
Fertilizers	Act No. 156/1998 Coll.	Central Institute for Supervising and Testing in Agriculture
Chemicals	Act No. 350/2011 Coll.	Czech Environmental Inspection

Category of Products	Relevant Law	Supervising Authority
Firearms and Ammunition	Act No. 119/2002 Coll.	Czech Proof House for Firearms and Ammunition
Cosmetics	Act No. 258/2000 Coll.	Regional Hygienic Stations, Ministry of Health
Toys	Act No. 258/2000 Coll. and Regulation No. 86/2011 Coll.	Regional Hygienic Stations, Ministry of Health

However, the general product safety regulations in the GPS Act will still apply to special categories of products to the extent that the abovementioned laws do not provide special regulation.

7.3 Consumer Protection

The general obligations of importers, manufacturers and merchandisers regarding the provision of information on products sold to consumers in the Czech Republic are regulated in Act No. 634/1992 Coll., on Consumer Protection ("Consumer's Act"). The mandatory information specified in the Consumer's Act, when provided to the consumer in writing, must be in Czech language.

According to Czech law, products must be marked with identification of their manufacturer or importer; however, it is not required to reflect the country in which the product was manufactured on the packages of products.

Regulation of warranty for products sold to consumers is defined in the Czech Civil Code. The new Civil Code is effective as of 1 January 2014. Besides the rules already set forth in previous Civil Code, the new Civil Code contains certain further rights and obligations, incorporating into Czech legislation the Directive 2011/83/EU of the European Parliament and of the Council on consumer rights and, consequently, ensuring higher level of consumer protection.

According to the new Civil Code, a seller (i.e. an individual or legal entity acting within the scope of its business) is liable for any defects of goods sold to a consumer appearing within **twenty-four months after the takeover** of goods by the consumer, except for cases stipulated in the Civil Code (such as goods sold at a lower price due to the defect). Moreover, a seller's liability for defects of consumer products, as stipulated in the Civil Code, cannot be excluded or restricted by mutual agreement between the seller and the buyer (except for the case of used consumption goods, when the period for exercising the rights arising from a defective performance can be reduced to half). However, such liability can be expanded contractually.

For detailed information on Czech Republic product safety & consumer protection matters please contact:



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