

LEGALINK

INVESTMENT AND BUSINESS START UP IN THE CZECH REPUBLIC

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

The legal system in the Czech Republic (the “CR”) is a statute-based civil law system.

2. What are the major law courts in your country?

The Constitutional Court of the CR which serves as the main body for the protection of the Constitution. The Supreme Court of the CR which is the highest judicial authority both in civil and criminal law proceedings with the exception of the matters concerning the powers of the Constitutional Court of the CR. The Supreme Administrative Court which decides in the sphere of public administration.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

The source of laws in the CR is the Constitution and statute law.

4. What is/are the official language(s) in your country?

In the CR the official language is Czech.

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

The CR has no general restrictions on foreign investment. However some industry is regulated by special regulation because of state's interest (e.g. arms trade).

6. Are there any exchange control or currency regulations in your country?

Exchange control is regulated under the Act No. 219/1995 Coll., Foreign Exchange Act. Under the Foreign Exchange Act the residents and non-residents who carry out business in the CR have specific notification obligations. The Czech currency is freely convertible into foreign currency.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

Investment incentives are available in certain circumstances and include, e.g. a job creation grant, grants for retraining employees, property-related incentives and tax credits. Also as a part of a tax allowance, the taxpayer's tax base can be reduced by the costs of research and development activities.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

The foreign investors commonly use the private limited liability company (the "SRO") and joint-stock company (the "AS").

Please provide details on:

- i. Registration formalities;

Under the current regulation both AS and SRO have to be registered with the Commercial Register maintained by the relevant regional court. The company comes into existence on its registration in the Commercial Register. A memorandum of association (or foundation deed) has to be executed as a notarial deed before registration of the company with the Commercial Register.

- ii. Minimum (and maximum) share capital;

The minimum share capital for SRO is set to CZK 200,000. As for the AS the law requires minimum share capital CZK 2,000,000. However in case of subscribing shares through an initial public offering the minimum share capital has to be CZK 20,000,000. The maximum amount of share capital is not limited.

- i. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

The non-cash contributions are possible. Such contributes have to be valued and they are not allowed in case of subscribing shares through an initial public offering at AS.

- iii. Any restrictions on foreign shareholders;

There are no restrictions on foreign shareholders.

- iv. Management structure and any restrictions on foreign managers;

In case of SRO at least one managing director is required. The AS is managed by board of directors (or one director provided the AS has only

one shareholder) and a supervisory board of at least three members. There are no specific restrictions on foreign managers.

v. Directors' liability;

Directors and board members are liable for damages caused to the company resulting from a violation of their duties. The main duty of them is to act with the diligence of a careful manager.

vi. Parent company liability; and

As a shareholder the parent company is liable for the debts of SRO up to the amount of its subscribed but unpaid capital contribution.

vii. Reporting requirements (including filing of accounts).

The company is obliged to supply to the Commercial Register specific documents, such as any changes to the memorandum of association, foundation deed or articles of association, reports on intragroup relations, annual reports, regular, irregular or consolidated financial statements.

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The main law regulating employment relationships in the CR is the Act No. 262/2006 Coll., the Labour Code.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

The written form is required for a contract of employment. The contract of employment can contain any language which the parties of the contract understand. The contract of employment usually contain the type of work, the place of work, the start date of work, the weekly working time and schedule, notice periods, trial periods or the non-competition clauses.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Citizens and their family relatives from all EU member states, as well as Switzerland, Norway, Liechtenstein and Iceland do not need a work permit. Other foreign employees require a work permit and a residence permit.

A work permit is issued by the relevant labour office. Obtaining a work permit takes from 30 to 60 days and it costs CZK 500 (administrative fee).

A work permit is issued by the Czech Ministry of Interior. Obtaining a work permit takes from 90 to 120 days according to applicable law and it costs CZK 2,500 (administrative fee).

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

In case of AS with more than 50 employees, the one third of the supervisory board is appointed by employees. Moreover under the Labour Code some matters have to be consulted with the employees and unions such as collective dismissals.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

The Labour Code contains many provisions which protect the employee as a weaker party. The most important matters such as a minimum wage, working hours or minimum notice period are regulated by the Labour Code.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

The pension system in the CR is mandatory with possibilities to participate in the additional voluntary pension systems.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

Under the Labour Code the employer can terminate employment contract for employer-related organisational grounds (such as redundancy) or on the basis of employee's health reasons, breach of obligations, poor performance. Dismissal for any other reason than regulated under the Labour Code, or without a reason, is regarded as unlawful.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Redundancy is one of the reasons for dismissal of an employee under the Labour Code. In case of mass layoffs the employer is obliged to notify the trade union, the council of employees and the Labour Office.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Taxation of individuals depends in the CR upon residence.

18. Under what circumstances are employees subject to taxation in your country?

The Czech tax residents are liable to personal income tax on all sources of income regardless of where the income is received from. The Czech tax residence of individuals is determined according to their permanent home or the length of their stay in CR (183 days or more in CR in the relevant calendar year, either continuously or periodically).

19. What income tax or social security contributions must be paid by:

i. Employees?

The tax resident employees are obliged to pay:

- Personal income tax (15% on the employee's salary plus the employer's actual social security and health insurance contribution);
- Social security contributions (6.5% of the employee's gross salary);
- Health insurance contributions (4.5% of the employee's gross salary).

The non tax resident employees are subject to personal income tax on their income sourced in the CR.

ii. Employers, in relation to their employees?

The employers are obliged to pay social security contributions (25% of employees' gross salary) and health insurance contributions (9% of the employee's gross salary)

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Taxation of corporations depends in the CR upon residence.

21. Under what circumstances are incorporations subject to taxation in your country?

Under the Act No. 586/1992 Coll., Income Tax Act, the tax resident companies are defined as those seated in the CR or managed and controlled from the CR.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

The main taxes that are potentially applicable to tax resident companies are:

- Corporate income tax (generally 19% or 15% for the income of dividends or 5% for the income of collective investment);
- Value added tax (VAT) (21% or 15% based on the kind of goods or services);
- Road tax (the annual tax rate is CZK 1,200 to CZK 4,200 based on the engine cylinder capacity or CZK 1,800 to CZK 50,400 based on the weight of the vehicle and number of axles).

The non tax resident companies are liable to corporate income tax on their income sourced in the CR.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

Generally the tax is 15%. In a case the shareholder is a company which is tax resident in another EU member state and holds at least 10% of shares of a Czech tax resident company the dividends are exempt from tax. Even if a shareholder is not a tax resident in EU member state there could be a tax exemption if certain criteria are cumulatively met (primarily a double taxation treaty with its country of residence shall be concluded and it shall be subject to corporate income tax of at least 12% in its country of residence).

ii. Dividends received from foreign companies?

Generally, the tax is 15%. In a case the shareholder is a Czech tax resident company (or a permanent Czech branch of non tax resident company) and holds at least 10% of shares of a company which is tax resident in another EU member state the dividends are exempt from tax. Even if a subsidiary company is not a tax resident in EU member state there could be a tax exemption if certain criteria are cumulatively met (primarily a double taxation treaty with its country of residence shall be concluded and it shall be subject to corporate income tax of at least 12% in its country of residence).

iii. Interest paid to foreign corporate shareholders?

Generally, tax is 19%. Nevertheless, interest on foreign loans paid by a tax resident company (or by a permanent Czech branch of a company incorporated in another EU member state) to a company that is tax resident in another EU member state is exempt from tax where the companies concerned are interconnected through its capital and other certain criteria are met.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

Generally, tax of 19% is payable. Nevertheless, IP royalties paid by a tax resident company (or by a permanent Czech branch of a company incorporated in another EU member state) to a company that is tax resident in another EU member state are exempt from tax where the companies concerned are interconnected through its capital and other certain criteria are met.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

Where an entity has loans from related entities (Czech or foreign), there are debt-to-equity ratios over which interest and similar expenses paid are not deductible for corporate tax purposes. Interest paid on credits and loans when the creditor is a related person to the debtor is not recognised as an expense if the ratio of debt-to-equity exceeds 6:1 in the course of a taxable period if the recipient of the credits and loans is a bank or insurance company, or 4:1 for other recipients. Interest paid on profit participating loans is generally not tax deductible.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

A foreign subsidiary's profits need not be imputed to a parent company that is a tax resident. However, companies managed and controlled from the CR are considered to be Czech tax residents (see question 21).

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

If related parties agree a transfer price lower than what would be agreed in an independent business relationship, the tax authority will calculate the tax due by looking at the arm's-length value of the transaction. To avoid this, the reasons for the different pricing must be satisfactorily proved to the tax authority in a transfer pricing analysis.

27. How are imports and exports taxed in your country?

Following rules on import and export deductions apply in CR:

Imports to the CR are subject to customs duties determined by EU tariff schedules. There are no customs duties on exports.

Exports of goods to a taxable person inside or outside the EU are exempt from Czech VAT. Imports of goods from outside the EU are subject to Czech VAT (see question 22). Imports from another EU member state will also be subject to VAT if they are made by a Czech taxable person. There are exceptions to these general VAT rules.

Furthermore the excise tax at different rates is applicable for defined kinds of goods (for example, alcohol, tobacco and petrol). The customs procedure is treated separately from the excise duty procedure. If the goods are placed in any customs duty regime, they cannot be under the excise duty suspension procedure.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

The CR has concluded double tax treaties with 80 countries including the majority of EU member states, China and the USA.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

The competition law in the CR is regulated under the Act No. 143/2001 Coll., Competition Act.

30. Are restrictive agreements and practices regulated by competition law in your country?

Under the Competition Act the agreements and practices that lead, or could lead, to a violation of competition rules are prohibited and void.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Under the Competition Act the abusing of a dominant position to the detriment of other competitor or customers is prohibited.

32. Are mergers and acquisitions subject to merger control in your country?

Mergers and acquisitions are subject to merger control of the Office for the Protection of Competition if they are considered to be significant concentrations.

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

Trade marks

i. What is the nature of the right?

Trade mark is a mark capable of graphic representation and of distinguishing goods or services.

ii. How is it protected?

Trade marks must be registered with the Industrial Property Office.

iii. How is it enforced?

Anyone who violates the rights to trade mark can be ordered to stop such violation, compensate damages of the trade mark's owner or provide an appropriate satisfaction. Trade marks are also protected under the criminal law.

iv. How long is it protected?

Trade marks are protected over ten years from the date of application. It is also possible to renew the protection every ten years.

Patents

i. What is the nature of the right?

Under the Act No. 527/1990 Coll., Inventions and Innovations Act, the patents are new technical inventions that are the result of inventive activity and capable of industrial use, unless expressly excluded from protection.

ii. How is it protected?

Patents must be registered with the Industrial Property Office.

iii. How is it enforced?

The enforcement of rights is same as for the trade marks.

iv. How long is it protected?

Patents are protected over twenty years from the date of application.

Industrial designs

i. What is the nature of the right?

Industrial designs is the appearance of part or entire product resulting from certain characteristics of lines, contours, colours, shape, texture of the product or its ornamentation, which is new and possible to distinct.

ii. How is it protected?

Industrial designs must be registered with the Industrial Property Office.

iii. How is it enforced?

The enforcement of rights is same as for the trade marks.

iv. How long is it protected?

Industrial designs are protected over five years from the date of application. It is also possible to renew the protection every five years up to a maximum of 25 years.

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

i. Agency;

The agency agreements are regulated under the Act No. 513/1991 Coll., Commercial Code. Under such agreement, which must be in writing, the agent is obliged to seek potential customers interested in contracting with the principal or make contracts with those potential customers on behalf of the principal.

ii. Distribution; and

There are no specific laws regulating the distribution.

iii. Franchising

There are no specific laws regulating the distribution.

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

The electronic signature is regulated under Act No. 227/2000 Coll., Electronic Signature Act.

The distance selling is regulated under the Act No. 40/1964 Coll., Civil Code. The Civil Code regulates commercial contracts concluded at a distance between suppliers and consumers. The distance selling in financial services is regulated by specific provisions of the Civil Code.

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details.

Protection of personal data is regulated under the Act No. 101/2000 Coll., Personal Data Protection Act. The Personal Data Protection Act regulates the collection and processing of personal data by public authorities, private entities and individuals. Those who collect or process personal data must take steps to protect such data and are bound by special obligations, including a notification obligation to the Czech Data Protection Authority.

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

The seller's general liability to consumers for any product defects is regulated under the Civil Code. The Commercial Code regulates product liability between entrepreneurs. Under the Act No. 59/1998 Coll., Liability for Damage Caused by Product Defect Act, a producer or an importer is liable for death, injury or material damage resulting from a product defect.