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AR Factsheet

CZECH REPUBLIC



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Business structure. What types of business structures are there?

- **Sole trader:** Unlimited liability of the owner with their both business and private assets; In order to pursue such debtors, you will need the first name and surname of the debtor, plus the business registration number.
- **Public company (verejna obchodni spolecnost, v.o.s.):** No minimum capital; Unlimited liability of the company and partners.
- **Limited partnership (komanditni spolecnost, k.s.):** The value of registered capital is set according to the partnership contract; At least one partner has unlimited liability with their both business and private assets; Limited partners are only liable with company assets.
- **Limited company (spolenost s rucenim omezenym, s.r.o.):** A minimum capital of CZK 1.00; Liability is limited up to the amount of company assets.
- **Joint-stock company (akciová spolecnost, a.s.):** A minimum capital of CZK 2,000,000.00; Liability is limited to company capital.

Data sources. Where can I find information about a company?

- Corporate information is available at the Ministry of Justice: www.justice.cz

Credit Checks. Where can I find financial information about a business?

- You can obtain information on the financial state of affairs for companies and industry at the Ministry of Justice. There are also numerous private reporting agencies offering credit checks.

Judgment Search. Can I find out if a business already has a judgment against it?

- Normally you find this information in a credit report. Credit reports are offered as a service online.



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Contracting. How do businesses contract with each other and which documents do you need if you have to go to court?

- In order to start legal action, you will need the following documents:
 - an original power of attorney;
 - an extract from the trade register;
 - copies of any unpaid invoices, contracts, relevant orders, confirmations and transport documents (CMRs) signed by the buyer;
 - general terms and conditions and current statements of account.
- These documents are also required for any supporting claims arising from the purchase contracts.
- Optional documents are:
 - copies of credit notes;
 - any other correspondence that may verify the claim;
 - the contract of the debt's assignment if the debt is claimed on behalf of a third party that is not the original seller of the unpaid goods.

Retention of title

- Retention of title must be agreed upon explicitly prior to the delivery and must be in the form of a public instrument made by a notary or at least in written form with officially authenticated signatures.

PRE-LITIGATION

Letter before action. Do you have to send a demand letter to a debtor before going to court?

- Reminders for payment are usually sent to the debtor before the court proceedings start but are not necessary according to the law.
- However, without sending the reminders, the creditor is not entitled to obtain legal costs from the debtor.
- Reminders also increase the chance of collecting money in an amicable way. If the claim is not settled, legal action may be issued.

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Can you claim interest and collection costs from customers if their payment is late?

- Interest rates should be specified in the contract between the creditor and debtor. If they are not, the creditor can charge an interest rate on late payment based on the law.
- The interest rate is the same for all business relations and is prescribed by civil law. It is calculated as the amount of the repo rate set by the Czech National Bank, plus 8.0%.

LITIGATION

Limitation period. How much time do you have before you must start legal proceedings?

- The general limitation period in the Czech Republic is:
- For contracts concluded before 31st December 2013:
 - four years after the due date set by the original invoice for business-to-business claims.
- For contracts concluded after 1st January 2014:
 - three years after the due date set by the original invoice regardless of the nature of the claim.
- The limitation period can be interrupted if a creditor starts legal proceedings based on a written acknowledgement of debt.



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ADR. What forms of Alternative Dispute Resolution are available and are they compulsory?

- ▶ Alternative Dispute Resolution procedures are based on a principle of voluntary submission. The law does not require ADR as a mandatory first step.
- ▶ Mediation in the Czech Republic occurs sporadically and is mostly carried out by non-judicial mediators. As of 1st September 2012, Act No. 202/2012 Coll., the Mediation Act, came into effect. This Act establishes a new category of registered mediators who are required to pass special mediation exams.
- ▶ A faster and more confidential form of resolving disputes is arbitration, where the parties to an arbitration contract agree that their dispute will be resolved by designated and independent arbitrators.
- ▶ The decision of the arbitrators (arbitration award) is final, and parties to an arbitration contract/clause in general cannot appeal against the arbitration award.

Court Proceedings. What forms of court proceedings are available, and do you need legal representation?

- ▶ The Czech Republic has a statute-based civil law system. Although case law is not binding, decisions of appeals courts can affect how laws are interpreted. The Czech Republic is a member of the EU and a signatory to several international treaties that supersede national legislation.
- ▶ The quickest way to process legal action is to bring legal action demanding that the court issues the payment order (**'platební rozkaz'**) or an electronic payment order (if the claim amount is up to CZK 1,000,000).
- ▶ They can be issued without a court hearing and may be executed under the condition that the debtor does not file a complaint within 15 days from the delivery of the payment order to the debtor.
- ▶ If the debtor files a complaint against a payment order or the payment order cannot be delivered to the debtor, the proceedings continue as an action of fulfilment of the obligation (the creditor requires the court to issue a judgment). The court usually schedules a hearing, which means that the court proceedings will take longer.

Time frame. How long does it take before you can get a judgment against a debtor?

- ▶ A lawsuit can take 12 months or longer depending on the complexity of the case and the availability of the judge and lawyers on both sides.



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How much does it cost to go to Court?

- ▶ Court fees are 5.0% of the claim amount or 4.0% in case of an electronic payment order – that equal at least CZK 1,000 and CZK 400 respectively. The fees are based on the principal, not including interest.
- ▶ Arbitration fees are established by a special arbitration rule. Lawyers' fees depend on the form of legal action and the amount of the claim in dispute and can vary from 2.0% to 6.0% of the claim.
- ▶ Other costs can be accumulated from the translation of documents.
- ▶ The courts always award either interest, on which the creditor and the debtor agree, or the statutory interest and a lump sum of collection costs. The losing party also must pay court fees and lawyer costs.

Enforcement of a court judgment. How do you enforce domestic/overseas judgments?

- ▶ Legitimate court judgments and arbitration awards may be executed by executors in an execution proceeding if the debtor does not fulfil the obligations imposed by the court judgment or arbitration award.
- ▶ Execution proceedings comprise two parts. The first part starts by filing a motion to an executor and determining the question of formal requirements. After the motion is filed to the executor, the court will authorise the executor to start execution proceedings. In the second part, the authorised executor
- ▶ carries out the execution proceedings. An execution can only be ordered if a motion is submitted by the entitled party or by any other party who can prove that the entitlement was transferred to them.
- ▶ The execution proceedings end when all claims are fully paid, including all charges, or if the debtor has no property.
- ▶ The enforcement of decisions imposing payment of a sum of monies can be carried out by means of deductions of wages or salary and other incomes, the assignment of receivables of the debtor, the sale of movable property or the sale of a business.
- ▶ The choice of the means of execution depends on the executor. In the case of a secured claim, a court decision can be enforced by the sale of movable property, bulk assets, groups of assets and residential or non-residential premises under the ownership that has been given as security in accordance with the specific legislation; by compulsorily debiting from a money claim that was given as security or by recovering against other property rights given as security.
- ▶ The enforcement of decisions can be carried out by the sale of immovable property as well.
- ▶ The enforcement generally takes several months, sometimes several years, depending on the method of enforcement and the complexity of the case.



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Insolvency

- Czech insolvency procedures are governed by Act No. 182/2006, the Insolvency Act (Insolvency Act). The Insolvency Act applies to the majority of debtors, with certain exceptions such as financial institutions. The object of the Czech insolvency procedure is to organise the property relations of persons affected by the debtor's insolvency or imminent insolvency and to achieve the highest possible and proportional satisfaction of the debtor's creditors.
- There are two main types of insolvency resolution methods for corporate and individual business debtors:
 - Bankruptcy liquidation (**konkurs**), that is, a sale of the debtor's assets (piecemeal or as a going-concern) with satisfaction of creditors through distribution of the proceeds.
 - Reorganisation (**reorganizace**), that is, a restructuring of the debtor's liabilities based on a reorganisation plan approved by creditors and court.
- Both types of proceedings take place within the framework of a unitary insolvency proceeding, which is differentiated into the method of resolution of financial distress usually only after insolvency has been declared.
- Insolvency proceedings are initiated by an insolvency petition (**insolvenční návrh**) filed either by a debtor or by a creditor. A debtor must file an insolvency petition without undue delay after it learns, or with due diligence ought to have learnt, about its insolvency.
- The next step is (usually) the declaration of insolvency (**rozhodnutí o úpadku**), that is, the actual opening of the proceedings. Provided that the debtor's petition is formally correct and comprehensive the court does not call for production of evidence and considers the facts presented in the debtor's petition and its appendixes (the threatening insolvency) as evidenced. The insolvency should be declared within a maximum of 15 days, without a court hearing.
- If there is a creditor's petition, and the debtor refutes the fact that it is insolvent, insolvency is usually declared only after a hearing. There are no firm deadlines and the creditor must prove the existence of multiple creditors and the actual insolvency of the debtor, which can take the form of either:
 - Balance sheet insolvency (**předlužení**), that is, debtor's assets (at fair market value) being lower than its liabilities.
 - Cash flow insolvency (**platební neschopnost**), that is, the debtor has more than 30 days overdue liabilities which it is unable to pay (the inability to pay is presumed in where the liabilities are overdue by more than three months).
- The decision on declaration of insolvency also contains, among other things:
 - The appointment of an insolvency trustee.
 - An invitation to creditors to register their claims within not less than 30 days and not more than two months.



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- The decision also convenes a claims verification hearing (**přezkumné jednání**) where the insolvency trustee, the debtor and possibly also individual creditors comment on and review the legitimacy of individual claims and for a creditors' meeting (**schůze věřitelů**) which may also (and in case of larger debtors often does) decide on the insolvency resolution method.
- The court decides on the insolvency resolution method and orders either bankruptcy liquidation or reorganisation no later than within three months after the declaration of insolvency and generally only after the first creditors' meeting.
- Reorganisation is generally available only to debtors exceeding either:
 - Annual sales of CZK100 million (as at 1 March 2012, US\$1 was about CZK18.5).
 - Minimum staff of 100 full-time employees.
- Debtors that do not meet these thresholds may enter reorganisation only if they submit a plan pre-approved by the majority of secured and unsecured creditors within 15 days after the decision on declaration of insolvency. Therefore, the court normally waits at least 15 days after the declaration of insolvency, at which time it usually orders bankruptcy liquidation of debtors that do not meet the reorganisation thresholds.
- The closure of the insolvency procedure depends on the selected insolvency resolution method.
- In bankruptcy liquidations, the procedure normally terminates after the court receives notice from the insolvency trustee on fulfilment of the schedule resolution (**rozvrhové usnesení**), which provides for distribution of the proceeds from the sale of the debtor's assets. Although unsatisfied claims against the debtor do not cease to exist after the bankruptcy liquidation, the termination of the bankruptcy liquidation is normally followed by cessation of existence of a corporate debtor.
- In reorganisations, when the plan (or its essential portion) is consummated, the court will, on an application by the debtor supported by reports on the progress of the reorganisation by the insolvency trustee and creditors' committee, close the reorganisation and thereby the insolvency proceedings. If the debtor does not fulfil the plan (or there are other breaches), the court can convert it into bankruptcy liquidation.



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The information in this document is accurate to our knowledge as of October 2020.

The know-how in this fact sheet is not intended to constitute a definitive or complete statement of the law, nor is it intended to constitute legal advice for any specific situation. We do not accept any responsibility for action taken as a result of information provided by us. It is your responsibility to take specific advice when dealing with specific situations. The fact sheet is intended as educational in nature and may not reflect all recent legal developments and may not apply to the facts and circumstances of individual transactions and cases

Nothing in this fact sheet shall be construed or relied on as providing any legal representation, advice or opinion whatsoever on behalf of us or our staff.

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