



CZECH REPUBLIC DEVELOPMENTS 2001/2002

Only 33 more laws need to be implemented to harmonize the Czech legal system with that of the European Union. These laws should be passed by the beginning of next year, as January 1, 2003 is the date that the Czech Republic would like to be prepared for accession to the EU.

Three of these remaining laws are already in parliament and the government has prepared another 13, but will not have the chance to present them to lawmakers before the mid-June elections. The Ministers would like to prepare the 17 remaining laws before the end of August so that they could go through the legislative process.

The Czech Republic also must still fulfill a number of non-legislative criteria, such as fighting corruption, reforming the system of public administration, ensuring continuing education for the justice sector, fighting racism and integrating foreigners.

- 2001 Court Executors Act

- ❑ New legislation has introduced this institution to the Czech legal system in hope of making the enforcement of judgments more effective. Court Executors are private legal professionals who have been granted a range of legal tools for the process of enforcement of judgments. Once a plaintiff has a valid judgment for enforcement, he/ she may either nominate a particular Executor or request a Court to appoint an Executor.
- ❑ Executors are entitled to gather information concerning the property of a debtor and are entitled to request relevant information from courts, prosecutors, police, Security Center, other state organs, banks, insurance companies, post offices and also Notaries or Attorneys. Upon request of an Executor, third parties are bound by the duty to reveal information concerning the property of the debtor. In the case of failure to comply with this duty they are not only liable for damages, but also subject to administrative fines and potential criminal liability. The conflict of this provision with the professional confidentiality duty of certain professions is now widely discussed and will probably result to new legislation.

- ❑ Executors are entitled to order banks to prevent any disposition of funds on an account by the debtor. They are also entitled to block transfers and other transactions concerning immovables registered at the Cadastral Office, and to take similar preventive actions concerning moveables or intangible assets that may be registered in the securities register, register of liens, motor vehicle register, etc. These restrictions will remain valid until the subject debt is paid in full or executed. Any disposition of assets in violation of the restrictions is not only null and void but also potentially subject to criminal liability.
- ❑ Executors are entitled to use their discretion when decided on the form of execution to be used. In doing so the Executor can combine more than one applicable method and is not bound by the principal of “proportionality.” In practice this could lead to the situation when (for instance) the sale of immovables could be ordered to satisfy a minor debt of a value substantially lower than value of immovable properly in question.

Forms of the execution used by the Court Executors are:

- Deductions from salary or similar income (including pensions, scholarships, etc.).
- Transfer of claims.
- Confiscation of the shares in the business companies or cooperatives.
- Execution of intellectual property rights
- Sale of movables.
- Sale of immovables.
- Sale of the enterprise or parts thereof.

The new legislation has also introduced auctions organized by Court Executors. Such auctions may be organized based on a public announcement and following only very general, rather informal rules. Auctions may be used as instruments for enforcement of debts in case of both movables and immovables.

The first few months following introduction of Court Executors to the Czech legal system has shown that they seem to be a useful tool. They are frequently used by creditors due to the fact their fees are not high, mostly being determined subject to agreement between the creditor and Executor. Some Executors do not require an up front payment of fees and are willing to advance all their expenses from the executed claims.

- **Foreign Acquisition of Czech Real Estate**

The Foreign Exchange Act has been amended so as to allow the acquisition of Czech real estate (with exception of forest or agricultural land) by foreign companies who have established a registered branch in the Czech Republic. Although this may appear to be a signal that the government is abolishing barriers on direct investment in real estate by foreigners, it is actually a largely cosmetic change, since the registering a branch is essentially as administratively demanding as registering a Czech legal entity.

- **Commercial Code Amendment 2001**

A recent amendment of the Commercial Code has introduced the topic of company relationship reports. Czech companies controlled by a “controlling person” (defined as “a person that de facto or legally exercises, directly or indirectly, a decisive influence on the control or operation of another person’s enterprise, e.g., a majority shareholder, a parent company”) must prepare and file annual reports with the Commercial Register describing its relationship and any related party transactions with the controlling party and other related parties. In the alternative to the report, a company may submit a copy of a Controlling Agreement governing relations with the controlling party and any related parties.

- Companies now have a much more extensive duty to submit various documents to the Document Register maintained by the Commercial Register. These documents include, among others, controlling agreements, contracts on profit transfer, decisions concerning the enforcement of a judgment by sale of a business share of the shareholder or agreement of the spouse with the business activities of the other spouse. Failure in the duty to submit the required documents can lead to imposition of extensive fines.
- An amendment to the Commercial Code specifically regulates the possibility of resignation of a member of the statutory body of a company. Resignation of a member of a corporate board is effective on the date when such resignation was taken into consideration by the respective board or by the failure of the respective organ to do so.
- The use of absorptions as a form of business transformation has been severely limited. Previously, a majority shareholder could decide on an absorption without consent of minority shareholders. This has now been reversed, as a majority shareholder is not allowed to participate in a General Meeting that would approve the absorption process.

- **Consumer Protection**

Effective in January of 2003, significant changes to the legal definition of a seller’s liability for goods sold will be introduced as part of the harmonization of Czech law to EU standards. One of the most significant changes is the introduction of a 24-month mandatory warranty period on consumer goods (as opposed to the current 6 month period). In addition to the new warranty period, consumers will also have more options when selecting a remedy for a defective item, e.g., repair, exchange, reduction of purchase price or withdrawal from the contract.

- **Investment Incentives Act**

Partially in response to EU objections that more public support was being provided than allowed in EU member states, the Czech Parliament has revised the Investment Incentives Act. Investors who meet criteria may be eligible for some or all of the following incentives:

- Corporate tax relief of up to 50% for ten years (newly-established companies) or partial corporate tax discount for five years (already existing companies).
- Job-creation grants.

- Training and re-training grants.
- Provision of industrial (infrastructure) property at a discount.
- Transfer of land owned by the Czech state at a discount.

The incentives are offered subject to the following eligibility criteria:

- The investment must be made in the manufacturing sector and at least 50% of the cost of the production line must consist of machinery listed on a government-approved list of high-tech machinery.
- The investment must involve the acquisition or construction of a new production plant or into the expansion or modernization of existing production facilities used to launch a new production activity.
- The investor must invest a minimum of CZK 350 million (ca. USD 10 million). This can be reduced to CZK 100 million (ca. USD 3 million) in economically underdeveloped areas.
- Investment of at least CZK 145 million (CZK 50 million in economically underdeveloped areas) must be covered by the equity of the investor.
- Investment into machinery must account for no less than 40% of the total investment amount.
- The proposed production must meet all Czech environmental standards.