

# ARBITRATION IN THE CZECH REPUBLIC

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## 1. Historical background and overview

- 1.1.1 The pre-communist Czechoslovak legal roots were strongly influenced by the Austro-Hungarian legal system and, prior to 1939, commercial arbitration was well established.
- 1.1.2 After the communist reforms of the Czechoslovak legal system, only foreign trade disputes between state trading organisations of the Member States of the Council for Mutual Economic Assistance (**COMECON**) could be referred to arbitration before the Permanent Court of Arbitration attached to the Czechoslovak Chamber of Commerce. Such arbitrations were governed by the relevant provisions of the 1972 Moscow Convention,<sup>1</sup> the 1963 Czech Arbitration Act (**1963 Czech Arbitration Act**)<sup>2</sup> and the 1963 Czech Civil Procedure Code (**Czech Civil Procedure Code**).<sup>3</sup>
- 1.1.3 Following the velvet revolution of 1989, as part of an extensive program of legal reform, a legislative commission was formed with the task of producing a new arbitration law. It was hoped that modernisation of the arbitration law would help to secure inward foreign investment by providing an internationally acceptable and politically neutral system of commercial dispute resolution. There was also a concern that, in the post-communist era, an increasing number of foreign investment contracts were providing for arbitration abroad (e.g. in Vienna or London) rather than in the Czech Republic.
- 1.1.4 As a result, the new Act No. 216/1994 Coll. on Arbitral Proceedings and Enforcement of Awards (**Czech Arbitration Act**) was adopted. The Czech Arbitration Act is based on the 1963 Czech Arbitration Act and, in contrast with the new arbitration laws in many jurisdictions elsewhere in Central and Eastern Europe, it is not based on the Model Law (1985).<sup>4</sup> However, many of the underlying concepts and procedural provisions are similar.
- 1.1.5 The Czech Arbitration Act brought about wide ranging changes to the Czech arbitration regime. A key change effected by the Czech Arbitration Act was to enable domestic as well as international disputes to be referred to arbitration. It

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<sup>1</sup> Convention on the Settlement by Arbitration of Civil Law Disputes Resulting from Relations of Economic and Scientific Technical Co-operation, 1972.

<sup>2</sup> The Act No. 98 – Collection of Laws of the Czechoslovak Socialist Republic Relating To Arbitration In International Trade And To Enforcement Of Awards, 1963.

<sup>3</sup> The Act No. 99/1963 Coll., Civil Procedure Code.

<sup>4</sup> For the full text of the Model Law (1985), see CMS Guide to Arbitration, vol II, appendix 2.1.

also widened the range of disputes that are capable of being arbitrated. These were significant changes from the old law which restricted the use of arbitration to disputes arising from international trade agreements between state trading organisations.<sup>5</sup>

- 1.1.6 Since the division of Czechoslovakia and the creation of the Czech Republic in 1993, the Permanent Court of Arbitration has operated under the name of the Czech Arbitration Court Attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (**Czech Arbitration Court**). It is the only permanent Czech arbitration court in the Czech Republic with general jurisdiction. The Czech Arbitration Court organises and supervises individual arbitral proceedings under its rules but does not itself resolve disputes. This task is carried out by the arbitral tribunals appointed under the Czech Arbitration Court's rules. The Czech Arbitration Court provides overall support and administration services to arbitral tribunals, including services providing for secretaries, reception and delivery of documents. The President of the Czech Arbitration Court (**President**) may appoint arbitrators, upon the request of the parties or if the arbitrators appointed by the parties cannot agree on the identity of a third arbitrator. The other two Czech permanent arbitration courts, the Arbitration Court attached to the Commodity Exchange and the Arbitration Court attached to the Stock Exchange, are concerned with disputes arising from the relevant exchanges.
- 1.1.7 Since 1994, the Czech Arbitration Court no longer has a monopoly in relation to institutional arbitration. Arbitrations under the rules of other international arbitral institutions, such as the LCIA<sup>6</sup> or the ICC<sup>7</sup> are also permitted and used with increasing frequency in the Czech Republic, as are ad hoc arbitrations, including arbitrations under the UNCITRAL Rules (1976)<sup>8</sup> and UNCITRAL Rules (2010).<sup>9</sup>
- 1.1.8 The Czech Arbitration Court remains the premier permanent arbitral institution in the Czech Republic for the resolution of both domestic and international disputes. It adopted two new sets of rules in 1996: one concerning international arbitration (**Czech International Arbitration Rules**)<sup>10</sup> and the other concerning domestic arbitration. The domestic and international arbitration rules differ on various issues

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<sup>5</sup> See paragraph 1.1.2 above.

<sup>6</sup> For the full text of the LCIA Arbitration Rules, see CMS Guide to Arbitration, vol II, appendix 3.12.

<sup>7</sup> For the full text of the ICC Arbitration Rules, see CMS Guide to Arbitration, vol II, appendix 3.7.

<sup>8</sup> For the full text of the UNCITRAL Rules (1976), see CMS Guide to Arbitration, vol II, appendix 3.1.

<sup>9</sup> *Ibid*, appendix 3.2.

<sup>10</sup> The Rules of the Czech Arbitration Court.

including procedure, the fees charged and the language and place where arbitral proceedings are heard. Both rules provide a comprehensive framework for commercial arbitration in the Czech Republic. Since April 2008, the Czech Arbitration Court has been entitled to handle disputes between businesses and consumers (**Consumer Disputes**). The Czech Arbitration Court is also the Alternative Dispute Resolution Centre for disputes regarding domain names in accordance with principles and rules set out by the European Commission.<sup>11</sup>

- 1.1.9 This chapter will focus on the statutory provisions that apply under the Czech Arbitration Act to the extent that the parties have not (validly) agreed on the application of institutional arbitral rules or otherwise determined the applicable procedural rules governing the arbitral proceedings. However, the Czech International Arbitration Rules are also mentioned where they contain provisions of particular interest.

## 2. Scope of application and general provisions of the Czech Arbitration Act

### 2.1 Subject matter

- 2.1.1 The Czech Arbitration Act is applicable to the resolution of proprietary disputes<sup>12</sup> (i.e. claims of a financial or monetary nature) by independent and impartial arbitrators and also governs the enforcement of awards.
- 2.1.2 The Czech Arbitration Act governs all arbitral proceedings taking place under arbitration agreements made after 1 January 1995. Arbitrations arising from agreements made before 1 January 1995 will continue to be governed by the 1963 Czech Arbitration Act regardless of the date of commencement of the arbitral proceedings.<sup>13</sup> This provision of the Czech Arbitration Act is mandatory. The 1963 Czech Arbitration Act will therefore continue to be used for some years to come.
- 2.1.3 On 20 December 2011, the Chamber of Deputies of the Parliament of the Czech Republic approved a new amendment to the Czech Arbitration Act which was subsequently signed by the President of the Czech Republic on 2 January 2012 (**2011 Amendment to the Czech Arbitration Act**). The 2011 Amendment to the Czech Arbitration Act will take effect from spring 2012.

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<sup>11</sup> See European Commission Regulation (EC) No. 874/2004.

<sup>12</sup> See paragraph 3.3.1 below for detail on what constitutes a “proprietary” dispute.

<sup>13</sup> Czech Arbitration Act, s 48.

2.1.4 The primary goal of the 2011 Amendment to the Czech Arbitration Act is to provide wider protection for consumers as required by the Council Directive 93/13/EEC on Unfair Terms in Consumer Contracts, dated 5 April 1993 (**UTCC Directive**).<sup>14</sup>

2.1.5 The Czech Civil Procedure Code (as amended by the Czech Arbitration Act) also continues to apply to arbitral proceedings, subject to any expressly incorporated institutional rules, such as those of the Czech Arbitration Court or of the ICC. Where the arbitration involves foreign parties or elements, the 1963 Private International Law and Law of International Procedure Act,<sup>15</sup> which deals with conflicts of law issues, applies.

## 2.2 Structure of the law

2.2.1 The Czech Arbitration Act is rather brief; it only contains 50 Sections. It is divided into the following eight parts:

- (i) Part One (Sections 1–3): subject matter and arbitration agreement;
- (ii) Part Two (Sections 4–13): arbitrators, appointment and exclusion of arbitrators and the permanent arbitration courts;
- (iii) Part Three (Sections 14–30): arbitral proceedings, awards and the use of the Czech Civil Procedure Code;
- (iv) Part Four (Sections 31–35): setting aside of an award by the court and interruption of enforcement proceedings;
- (v) Part Five (Sections 36–40): provisions regarding relations with foreign countries;
- (vi) Part Six (Sections 41–44): competence and jurisdiction of courts;
- (vii) Part Seven (Section 45): modification and amendment to the Czech Civil Procedure Code; and
- (viii) Part Eight (Sections 46–50): transitional and final provisions.

## 2.3 General principles

2.3.1 The general principles of the Czech Arbitration Act, and Czech arbitration law in general, include:

- the equal treatment of the parties in the arbitral proceedings;
- the rights of parties to be given the full opportunity to present their respective cases;
- the freedom of parties to agree on the procedural rules to be followed in the arbitral proceedings;

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<sup>14</sup> See further at section 11.1 below for further detail on changes introduced by the 2011 Amendment to the Czech Arbitration Act.

<sup>15</sup> The Act No. 97/1963 Coll., on Private International Law and Law of International Procedure Act.

- in international arbitrations, the freedom of parties to determine the law applicable to the substance of their dispute;
- the independence and impartiality of arbitrators;
- non-publicity of arbitral proceedings, including hearings; and
- the statutory duty of confidentiality of arbitrators.

## 3. The arbitration agreement

### 3.1 Definitions

- 3.1.1 There is no specific definition of an arbitration agreement contained in the Czech Arbitration Act, save for a general provision that parties may agree that any proprietary disputes arising from their relations, which would otherwise fall under the jurisdiction of the ordinary courts, will be decided by one or more arbitrators in ad hoc arbitration or institutional proceedings in a permanent arbitration court (i.e. one established by an Act of the Parliament of the Czech Republic, such as the Czech Arbitration Court).<sup>16</sup>

### 3.2 Formal requirements

- 3.2.1 Pursuant to the Czech Arbitration Act, an arbitration agreement may be entered into either in relation to a specific pre-existing dispute, or in relation to future disputes arising out of a given legal relationship.<sup>17</sup>
- 3.2.2 The Czech Arbitration Act requires arbitration agreements to be made in writing. An arbitration agreement made by telegram, telex, or other electronic means, enabling the contents of the agreement to be ascertained and the parties to the agreement to be determined, is deemed to have been made in writing.
- 3.2.3 If the arbitration agreement is contained in general terms and conditions governing the main contract to which the arbitration agreement applies then the arbitration agreement is validly concluded, provided that the offer of the main contract is accepted by the other party and there is no doubt that this acceptance extends to the arbitration agreement.
- 3.2.4 The arbitration agreement also binds the legal successors of the parties thereto, unless expressly agreed otherwise.

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<sup>16</sup> Czech Arbitration Act, s 2(1) and 13. See paragraph 3.3.1 below for detail on what constitutes a “proprietary” dispute.

<sup>17</sup> *Ibid*, s 2(3).

3.2.5 In international arbitrations, the issue as to whether disputes can be arbitrated in the Czech Republic is determined according to Czech law. However, the arbitration agreement will be valid if its form complies either with Czech law or the law of the place where the arbitration agreement was made.

### **3.3 Special tests and requirements of the jurisdiction**

3.3.1 Most disputes relating to “property” are able to be settled by arbitration. The precise ambit of this term is unclear, but it is generally accepted to include most claims of a financial or monetary nature. Generally, an arbitration agreement may be validly entered into if the parties could conclude a settlement in respect of the subject matter of the dispute referred to arbitration.<sup>18</sup>

3.3.2 Accordingly, the only disputes that cannot, in principle, be arbitrated are:

- those regarding personal status (e.g. divorce, annulment of marriage and paternity);
- those where court proceedings can be initiated in the absence of a motion (e.g. cases involving care of minors, legal capacity and guardianship, and inheritance); and
- those in which the substantive law does not permit an agreement between the parties which is contrary to mandatory statutory requirements (e.g. disputes relating to the enforcement of decisions and disputes arising out of insolvency proceedings or receivership).

### **3.4 Legal consequences of a binding arbitration agreement**

3.4.1 A binding arbitration agreement effectively prevents the parties from submitting their dispute to an ordinary court, unless both parties expressly or tacitly agree that their dispute is to be resolved by an ordinary court.

3.4.2 If a person brings a claim before an ordinary court in respect of a dispute which is subject to an arbitration agreement, the respondent should raise its objection to such court proceedings at the time at which it is required to take its first step in the proceedings. If the court finds that the dispute is subject to a valid arbitration agreement between the parties, it is obliged to terminate the court proceedings, unless both parties expressly declare that they do not insist on the arbitration agreement.<sup>19</sup>

3.4.3 An ordinary court is also authorised to continue with court proceedings (despite the objection as to the existence of an arbitration agreement) if it finds that:

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<sup>18</sup> In particular, pursuant to Czech Civil Procedure Code, s 99.

<sup>19</sup> *Ibid*, s 106(1).

- the matter in question is non-arbitrable under Czech law;
- the arbitration agreement is not valid or is non-existent;
- the resolution of the matter in question by the arbitral tribunal, or in arbitration, would exceed the powers given to the arbitral tribunal by the arbitration agreement; or
- the arbitral tribunal refused to discuss and resolve the matter in question.<sup>20</sup>

3.4.4 Where a court declines jurisdiction on the basis that the dispute is subject to a valid arbitration agreement, for the purposes of determining whether the claim was filed within the relevant statutory limitation period, the deemed date of filing will remain the date on which the court claim was originally filed, providing arbitral proceedings are commenced within 30 days of the court's decision.

3.4.5 Where arbitral proceedings have already been commenced before the filing of a claim in an ordinary court relating to the same dispute, the court must stay its proceedings concerning whether the dispute is subject to a valid arbitration agreement until the arbitral tribunal has decided on its competence and/or on the merits of the claim.

## 4. Composition of the arbitral tribunal

### 4.1 Constitution of the arbitral tribunal

4.1.1 Both Czech and foreign citizens may act as arbitrators, provided that they are of adult age and enjoy capacity to act under the law of their country or under the law of the Czech Republic.<sup>21</sup>

4.1.2 The parties are free to determine the number of arbitrators in the arbitration agreement. The arbitration agreement should set out the identity of the arbitrators or the procedure for determining the number of arbitrator(s) and procedure for their appointment. The arbitral tribunal must always be composed of an odd number of arbitrators.

4.1.3 If the parties have not made any provisions in relation to the number or appointment of arbitrator(s) in the arbitration agreement, each party shall be entitled to appoint one arbitrator. The arbitrators appointed by the parties shall then select the presiding arbitrator to act as the chair.

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<sup>20</sup> *Ibid.*

<sup>21</sup> The 2011 Amendment to the Czech Arbitration Act now specifically provides that an arbitrator must have good integrity and be of unimpeachable character.

- 4.1.4 The Czech Arbitration Act sets out the procedure to be followed in the event that a party who fails to appoint an arbitrator within 30 days of receipt of an invitation by the other party to make the appointment or if the arbitrators appointed by the parties are unable to agree on the identity of the chair.<sup>22</sup> In such circumstances – unless otherwise agreed by the parties in their arbitration agreement – the court shall appoint the respective arbitrator. The application to the court for such nomination can be made by any party to the arbitral proceedings or any of the arbitrators that have already been appointed.
- 4.1.5 The Czech International Arbitration Rules state that arbitral tribunals should consist of three arbitrators (or a sole arbitrator, if so agreed by the parties to the arbitral proceedings) and set out the appointment procedures to be followed, including a provision in relation to multi-party disputes.<sup>23</sup> Generally, if the parties, or the arbitrators appointed by the parties, fail to make an appointment, the appointment will be made by the President.

## **4.2 Procedure for challenging and substituting arbitrators**

### *The challenge of arbitrators*

- 4.2.1 The Czech Arbitration Act requires a proposed arbitrator to disclose to the parties or to the court forthwith all circumstances which are likely to give rise to serious doubts as to his or her impartiality and which would disqualify the arbitrator from acting as an arbitrator.<sup>24</sup>
- 4.2.2 Under the 2011 Amendment to the Czech Arbitration Act, arbitrators in Consumer Disputes are obliged to inform parties whether they have been involved in a dispute regarding one of the parties in the last three years.
- 4.2.3 The 2011 Amendment to the Czech Arbitration Act also strictly provides that arbitrators are excluded from hearing and making a decision in the matter if there is a reason to doubt their impartiality based on their relationship with the parties or their representatives.
- 4.2.4 An arbitrator who has been named in the arbitration agreement, or appointed by the parties, shall be disqualified from hearing the dispute if circumstances giving rise to serious doubts as to his or her impartiality are disclosed at a later date. Such arbitrator is required to resign from his or her office in the event of such circumstances being disclosed.

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<sup>22</sup> Czech Arbitration Act, s 9.

<sup>23</sup> *Ibid*, s 7.

<sup>24</sup> *Ibid*, s 8.

- 4.2.5 Each party has a right to challenge any of the arbitrators, experts or interpreters employed in the arbitral proceedings on the grounds that, in its opinion, they are biased or if it may be presumed that they are directly or indirectly interested in the outcome of the arbitral proceedings.
- 4.2.6 The same conditions and rules also apply if a nominating party decides to challenge its own nominee.

*Procedure for challenging an arbitrator*

- 4.2.7 If an arbitrator fails to resign from his or her office, notwithstanding the existence of reasons for disqualification, the parties have the right to agree on further steps to be taken. In addition, either party has the right to apply to the court for a disqualification order. If the parties do not agree on the steps to be taken, and if the arbitration is subject to rules that do not resolve this issue, the Czech Arbitration Act does not provide a clear answer as to whether the arbitral tribunal may determine the issue. In this respect the matter is usually submitted to the ordinary court for a decision.
- 4.2.8 In arbitral proceedings subject to the Czech International Arbitration Rules, the challenge shall be taken prior to the commencement of the oral hearing.<sup>25</sup> If it is taken at a later time, a challenge shall be granted only if the cause leading to such late challenge is held to be sufficiently serious. A decision on the challenge of an arbitrator shall be taken by the remaining arbitrators of the arbitral tribunal. If they are unable to agree, or if the challenge is against two arbitrators, the decision thereon shall be taken by the board of the Czech Arbitration Court. The board shall also decide on a challenge of a sole arbitrator. If the challenge of an arbitrator is sustained, a new arbitrator shall be elected or appointed in accordance with the Czech International Arbitration Rules. The new arbitrator shall be a member of the arbitral tribunal from the date on which he or she accepts his or her appointment.

*Substitution of arbitrators*

- 4.2.9 In the event that an arbitrator that has already been appointed by the parties resigns from their office, or is otherwise no longer in a position to exercise their function, the court shall appoint a new arbitrator upon the application of any party or of another arbitrator, unless otherwise agreed by the parties. When making the substitute appointment, the court is required to take into consideration circumstances guaranteeing the arbitrator's independence and impartiality.

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<sup>25</sup> The Czech International Arbitration Rules, s 22.

4.2.10 If a substitute arbitrator is appointed and if the arbitration is subject to rules that do not resolve this issue, the Czech Arbitration Act does not provide a clear answer as to whether the hearings, which have already occurred, need to be repeated. In arbitral proceedings subject to the Czech International Arbitration Rules it would be at the discretion of the arbitral tribunal as to whether the questions already discussed at earlier hearings would be reopened. Since there is no unified legal practice in this respect, the need for repetition of hearings would depend on particular circumstances and is usually decided on case-by-case basis. However, to minimise the risk of later annulment of the award by an ordinary court, it is recommended to repeat the hearings to include the new arbitrator. This is, however, at the discretion of the arbitral tribunal.

### **4.3 Responsibilities of an arbitrator**

4.3.1 The acceptance of the office of arbitrator must be made in writing.<sup>26</sup>

4.3.2 No person is obliged to accept the role of an arbitrator. However, once accepted, the arbitrator is obliged to pursue the office in accordance with Czech law and other regulations and is obliged to keep strictly confidential any facts and issues that come to their attention during the term of their office.<sup>27</sup>

4.3.3 Only the parties may relieve an arbitrator from the confidentiality obligations. However, if the parties refuse, the chair of an ordinary district court may decide on relieving an arbitrator from this obligation but only in a case where there are serious and grave reasons to do so.<sup>28</sup>

4.3.4 Relieving an arbitrator from confidentiality obligations is always decided on a case-by-case basis. However, one of the reasons for which an arbitrator may be relieved from his or her confidentiality obligation might be the need to disclose certain facts known to an arbitrator in pending criminal proceedings.

### **4.4 Arbitration fees and expenses**

4.4.1 The Czech Arbitration Act does not contain any express provisions in relation to the payment of fees and costs of the arbitral proceedings or their allocation as between the parties.

4.4.2 In ad hoc arbitral proceedings, the arbitral tribunal will, upon an application by a party, decide on the allocation and payment of the costs of the arbitral proceedings

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<sup>26</sup> Czech Arbitration Act, s 5(2).

<sup>27</sup> *Ibid*, s 5.

<sup>28</sup> *Ibid*, s 6.

between the parties including a party's reasonable costs of legal representation, if the arbitration agreement between the parties so provides. Arbitral tribunals often apply Decree No. 484/2000 Coll., **(2000 Decree)** which specifies the amount of costs that may be awarded to winning parties by the court (regardless of the actual amount of the costs). Typically, sums awarded under the 2000 Decree are lower than the actual costs incurred.<sup>29</sup>

- 4.4.3 In institutional arbitral proceedings, the rules of the relevant arbitral institution will generally contain detailed costs provisions. The Annex to the Czech International Arbitration Rules (comprising 15 Sections) makes detailed provision on the costs of arbitral proceedings before the Czech Arbitration Court. The arbitration fees are calculated by reference to the value of the claim although other factors, such as the number of parties and arbitrators, are also taken into account. The arbitration fee is payable upon the filing of the statement of claim or counterclaim, as the case may be. A lump sum payment on account of administrative costs will also be requested from the claimant.
- 4.4.4 The Czech Arbitration Act does not contain any express provisions regarding the fees and expenses of the arbitral tribunal. In ad hoc arbitrations, the arbitral tribunal's fees and expenses (including a payment schedule) will be determined by agreement between the parties and the arbitral tribunal.
- 4.4.5 In institutional arbitral proceedings before the Czech Arbitration Court, the arbitral tribunal's fees and expenses will generally be determined in the course of the arbitral proceedings and will not be known to parties in advance.
- 4.4.6 The arbitral tribunal's expenses might cover costs for: document production; translation; holding hearings outside the seat of the arbitration court; travelling costs and accommodation of arbitrators. These specific costs shall be paid in amounts actually incurred and cannot, therefore, be determined in advance.

## 4.5 Arbitrator immunity

- 4.5.1 The Czech Arbitration Act does not contain any express provisions in relation to the immunity of arbitrators, however, the issue has been considered by the judiciary but only in respect of institutional arbitral proceedings at the Czech Arbitration Court.

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<sup>29</sup> See section 8.5 below on the costs incurred in connection with applications by the arbitrators to the court for measures in support of the arbitration process.

- 4.5.2 An award made by arbitrators in proceedings brought under the auspices of the Czech Arbitration Court, is deemed to have been issued on behalf of the Czech Arbitration Court. Therefore, the Czech Arbitration Court is held to be directly liable rather than the individual arbitrators.
- 4.5.3 In respect of ad hoc arbitrators, the situation is less clear but the prevailing opinion is that questions as to the liability of an arbitrator should be dealt with in the contract concluded between the parties to the dispute and the arbitrator(s).

## 5. Jurisdiction of the arbitral tribunal

### 5.1 Competence to rule on jurisdiction

- 5.1.1 The scope of the arbitral tribunal's jurisdiction is determined in the first instance by the terms of the arbitration agreement between the parties. The Czech Arbitration Act provides that the arbitral tribunal has the power to rule on its own jurisdiction.<sup>30</sup> If the arbitral tribunal comes to the conclusion that it lacks the necessary jurisdiction, it shall order the discontinuance of the arbitral proceedings. An objection by a party to the jurisdiction of the arbitral tribunal on the grounds of the non-existence, invalidity or termination of the arbitration agreement must be raised no later than when taking the first step in the arbitral proceedings relating to the merits of the case, unless the objection is based on an allegation that the subject matter of the dispute is not capable of arbitration.<sup>31</sup> In that event, the objection can be raised at any stage of the arbitral proceedings. The right to object to the award may otherwise be lost.
- 5.1.2 In institutional arbitral proceedings, jurisdictional challenges are decided by the Czech Arbitration Court pursuant to a reference from the arbitral tribunal.

### 5.2 Power to order interim measures

- 5.2.1 The Czech Arbitration Act does not give arbitral tribunals the power to order interim measures such as injunctions. However, the ordinary courts have jurisdiction to grant such measures in support of the arbitral process.

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<sup>30</sup> Czech Arbitration Act, s 15(1).

<sup>31</sup> *Ibid*, s 15(2).

## 6. Conduct of proceedings

### 6.1 Commencing an arbitration

- 6.1.1 Arbitral proceedings shall commence on the date that the statement of claim is lodged with the arbitral tribunal.<sup>32</sup> Lodging a statement of claim with an arbitral tribunal has the same legal consequences (e.g. with regard to limitation of claims) as if the same were lodged with a court.
- 6.1.2 In institutional arbitral proceedings, the statement of claim must be lodged with the Czech Arbitration Court. In ad hoc arbitral proceedings, the statement of claim must be lodged with the chair of the arbitral tribunal, provided that the chair has already been determined or appointed. If the chair of the arbitral tribunal has not yet been determined or appointed, then the statement of claim shall be lodged with any arbitrator already determined or appointed.<sup>33</sup>
- 6.1.3 The Czech International Arbitration Rules contain parallel provisions for the commencement of institutional arbitral proceedings.<sup>34</sup> However, they require the claimant to pre-pay the arbitration fees and a lump sum to cover the administrative costs of the Czech Arbitration Court upon filing the statement of claim.
- 6.1.4 The Czech Arbitration Act does not contain express provisions in relation to the format, content or timetable of the parties' submissions to the arbitral tribunal. To the extent that the arbitration agreement between the parties does not set out the procedure to be followed, this will be determined by the arbitral tribunal or the chair. If none of the above procedures apply, the general provisions of the Czech Civil Procedure Code regarding the contents and form of statement of claim will apply as appropriate.
- 6.1.5 In contrast, the Czech International Arbitration Rules set out the mandatory minimum content necessary for the statement of claim in arbitral proceedings before the Czech Arbitration Court.<sup>35</sup> Upon filing, the statement of claim will be reviewed by the secretary of the Czech Arbitration Court and, if necessary, the claimant will be invited to remedy any defects. The statement of claim will generally have to be answered by the respondent within 30 days of service. The respondent is entitled to bring a counterclaim. Detailed provisions on the service of documents are set out in the Czech International Arbitration Rules.<sup>36</sup>

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<sup>32</sup> *Ibid*, s 14.

<sup>33</sup> *Ibid*, s 14(2).

<sup>34</sup> The Czech International Arbitration Rules, s 10.

<sup>35</sup> *Ibid*, s 17.

<sup>36</sup> *Ibid*, s 28.

6.1.6 With effect from 1 June 2004, the Czech Arbitration Court has introduced the concept of “online arbitration”. The parties to an arbitration dispute may, if they agree, initiate arbitration under the online rules.<sup>37</sup>

## **6.2 General procedural principles**

6.2.1 The parties have the freedom to agree on the procedural rules to be followed in the arbitration. Such agreement by the parties is binding on the arbitral tribunal. To the extent that the parties have not made provision for procedural issues in their arbitration agreement, the Czech Arbitration Act provides that procedural issues may be decided by the chair, provided that the parties or all of the other arbitrators authorise the chair to do so.<sup>38</sup> If no such agreement has been made, the arbitral tribunal shall be free to conduct the arbitral proceedings in the manner that it deems fit. The Czech Arbitration Act expressly provides that, when doing so, the arbitral tribunal shall avoid all superfluous formalities, but shall give full opportunity to the parties to present their respective cases and shall make findings of fact on which the decision is to be based.<sup>39</sup>

6.2.2 The arbitral tribunal shall apply the provisions of the Czech Civil Procedure Code to the arbitral proceedings before it in a reasonable manner, unless otherwise provided by the Czech Arbitration Act.<sup>40</sup> The Czech Civil Procedure Code therefore provides a fallback position in the event that the Czech Arbitration Act or the arbitration agreement between the parties does not contain any provisions in relation to a given procedural issue arising in the arbitral proceedings.

6.2.3 The Czech International Arbitration Rules apply in institutional arbitral proceedings before the Czech Arbitration Court.

## **6.3 Seat, place of hearings and language of arbitration**

6.3.1 The arbitral proceedings shall be conducted at the seat of arbitration that has been agreed on by the parties. If no such seat of arbitration has been agreed, then the arbitral proceedings shall be conducted at the seat of arbitration that has been determined by the arbitral tribunal. When determining the seat of arbitration, the arbitral tribunal shall take the legitimate interests of the parties into due consideration.

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<sup>37</sup> See the online arbitration facility [[www.arbcourtonline.cz](http://www.arbcourtonline.cz)] (accessed 20 December 2011).

<sup>38</sup> Czech Arbitration Act, s 19(1).

<sup>39</sup> *Ibid*, s 19(2).

<sup>40</sup> *Ibid*, s 30.

6.3.2 In institutional arbitral proceedings held under the Czech International Arbitration Rules, hearings are generally held at the Czech Arbitration Court in Prague.<sup>41</sup> On the initiative of the arbitral tribunal or by agreement between the parties, hearings may also be held elsewhere in the Czech Republic or abroad.

6.3.3 The Czech Arbitration Act does not contain any express provisions in relation to the language of the arbitral proceedings. Generally, all hearings will be held and decisions made in the Czech (or Slovak) language, unless otherwise provided in the arbitration agreement, agreed upon by the parties or determined by the rules of the relevant arbitral institution. Similar provisions apply to arbitral proceedings before the Czech Arbitration Court.<sup>42</sup>

#### **6.4 Multi-party issues**

6.4.1 The Czech Arbitration Act is silent on the issues of intervention and joinder. However, for institutional arbitral proceedings before the Czech Arbitration Court, the Czech International Arbitration Rules helpfully contain a number of provisions expressly addressing multi-party dispute situations which frequently pose procedural difficulties in ad hoc arbitral proceedings.<sup>43</sup> In multi-party arbitrations it may, therefore, be advisable for parties to opt for institutional arbitral proceedings before the Czech Arbitration Court rather than ad hoc arbitral proceedings.

#### **6.5 Oral hearings and written proceedings**

6.5.1 The Czech Arbitration Act requires an oral hearing, unless otherwise agreed by the parties.<sup>44</sup> The parties are, therefore, free to agree that all or part of the arbitral proceedings shall be conducted in writing or the parties can take the opportunity to use the online arbitration facility.<sup>45</sup>

6.5.2 The Czech International Arbitration Rules make detailed provision for the conduct of hearings in arbitral proceedings before the Czech Arbitration Court and set out simplified procedures for “document only” arbitrations, as well as for arbitral proceedings that result in an award without any grounds (these types of arbitral proceedings are 20–30% cheaper than standard arbitration).<sup>46</sup>

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<sup>41</sup> The Czech International Arbitration Rules, s 5.

<sup>42</sup> *Ibid*, s 6–7.

<sup>43</sup> Procedural difficulties frequently arise in relation to: the Czech International Arbitration Rules, s 13 (joinder of third parties with a legal interest in the outcome of the proceedings); and s 21 (appointment).

<sup>44</sup> Czech Arbitration Act, s 19(3).

<sup>45</sup> See paragraph 6.1.6 above.

<sup>46</sup> The Czech International Arbitration Rules, s 27.

## **6.6 Default by one of the parties**

6.6.1 The Czech Arbitration Act contains an express provision that a party which, through no fault of its own, has failed to take a step in the arbitral proceedings which was necessary in order for it to defend its rights or otherwise participate in the arbitral proceedings, should be allowed to remedy such failure. In such circumstances, an arbitral tribunal is obliged to permit such a party to later take whatever steps it ought previously to have taken, in order that it can defend its rights or otherwise continue to participate in the arbitral proceedings.<sup>47</sup>

6.6.2 However, if a party's default is not sufficiently excused, the arbitral tribunal may exclude some or all of the defaulting party's submissions. The Czech International Arbitration Rules contain a similar provision.<sup>48</sup>

## **6.7 Taking of evidence**

6.7.1 The arbitral tribunal has the power to hear witnesses, experts and the parties, provided that they appear voluntarily and do not refuse to give evidence. The arbitral tribunal may also consider other evidence if it is given voluntarily. However, the arbitral tribunal does not have the power under the Czech Arbitration Act to compel witnesses, experts or the parties to appear or to give evidence before it. If necessary, the arbitral tribunal can apply to the court to take any steps in the arbitral proceedings which the arbitral tribunal itself is unable to take.<sup>49</sup>

6.7.2 Pursuant to the rules of evidence applicable to arbitral proceedings at the Czech Arbitration Court, the arbitral tribunal takes the evidence, assesses the evidence freely at its discretion and may request the parties to produce supplementary evidence.<sup>50</sup>

## **6.8 Appointment of experts**

6.8.1 The arbitral tribunal does not have the power to appoint experts. However, the parties may agree on such an appointment and on the related costs.

6.8.2 If deemed necessary and where the parties fail to agree on an expert appointment the arbitral tribunal may request an ordinary court to make such an appointment.

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<sup>47</sup> Czech Arbitration Act, s 21.

<sup>48</sup> The Czech International Arbitration Rules, s 26.

<sup>49</sup> See further at section 6.10 below on the courts' powers in such circumstances.

<sup>50</sup> The Czech International Arbitration Rules, s 31–32.

## 6.9 Confidentiality

- 6.9.1 The Czech Arbitration Act makes it clear that arbitral proceedings shall not be public.<sup>51</sup> The confidentiality of arbitral proceedings is further protected by the Czech Arbitration Act, which imposes a statutory duty of confidentiality on the arbitral tribunal.<sup>52</sup> The arbitral tribunal may be relieved of this duty only by the agreement of the parties or (for serious reasons) by an order of the court.<sup>53</sup>
- 6.9.2 The arbitrators' confidentiality obligation covers all information which comes to their attention during the term of their office in a particular case, including documents which become part of the arbitration file, notifications or witness testimonies.
- 6.9.3 Parties to a dispute are not obligated to keep the proceedings confidential but it is prevailing good practice to do so. Despite the fact that the parties are not bound by a specific confidentiality obligation regarding arbitral proceedings, they must keep confidential information or documents covered by business, trade and/or state secret or similar confidentiality obligations arising from other acts and laws. In this respect it is always recommended to identify a document or information covered by such trade, business or other secret obligation as such.

## 6.10 Court assistance in taking evidence

- 6.10.1 The Czech Arbitration Act provides that to the extent that the arbitral tribunal is unable to take steps in the arbitral proceedings (due to the limits on their procedural powers), the competent court has jurisdiction to take such steps upon an application by the arbitral tribunal.<sup>54</sup> This relates primarily to the power to compel witnesses, experts and parties to give evidence to the court for use in the arbitral proceedings where such evidence is not voluntarily given to the arbitral tribunal directly. The courts usually provide assistance to requests made by the arbitral tribunals which have been constituted under the rules of the Czech Arbitration Court, ICC, LCIA or other similar well-established arbitration courts or institutions. There is no specific standard that the courts apply when deciding on such requests, however, such requests must be well reasoned and cannot be demonstrably illegal or discriminatory.

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<sup>51</sup> Czech Arbitration Act, s 19(3).

<sup>52</sup> *Ibid.*, s 6(1).

<sup>53</sup> *Ibid.*, s 6(2). See paragraph 4.3.4 above for an example of a serious reason.

<sup>54</sup> *Ibid.*, s 20(2).

## 7. Making of the award and termination of proceedings

### 7.1 Choice of law

7.1.1 If the arbitral proceedings involve legal relations containing an international element, the arbitral tribunal shall take its decision under the applicable law as chosen by the parties. If the parties have not determined the applicable law in their contract, the arbitral tribunal shall apply the local conflict of law rules in determining the applicable law. A choice of law by the parties, or the determination of the applicable law by the arbitral tribunal under the conflict of law rules shall, unless otherwise agreed by the parties, be taken as a reference to the substantive law of the jurisdiction so chosen or determined, excluding that jurisdiction's conflict of law rules.

7.1.2 In domestic arbitrations, the arbitral tribunal shall base its decision on the material law applicable to the case. The arbitral tribunal may also decide the case *ex aequo et bono*, provided that the parties expressly authorise it to do so.

7.1.3 In arbitral proceedings before the Czech Arbitration Court, the arbitral tribunal is additionally required to have regard to trade customs.<sup>55</sup>

### 7.2 Timing, form, content and notification of award

7.2.1 There are no specific periods for the issuance of an award or on the length of the arbitral proceedings. However, the Czech International Arbitration Rules provide for the possibility of accelerated arbitral proceedings upon express agreement of the parties (with the award to be issued within four months or within one month of payment of arbitration fees).<sup>56</sup>

7.2.2 An award shall be adopted by a majority of the arbitral tribunal. The same applies in arbitral proceedings under the Czech International Arbitration Rules, although they contain special voting rules in relation to the quantum of monetary awards.<sup>57</sup>

7.2.3 After the voting procedure on an arbitral award is completed (meaning an award is approved by a majority of the arbitral tribunal), the award must be produced in writing and signed by at least a majority of the arbitral tribunal. The Czech Arbitration Act expressly requires the operative part of the award to be unambiguous.<sup>58</sup>

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<sup>55</sup> The Czech International Arbitration Rules, s 8.

<sup>56</sup> *Ibid*, s 27a.

<sup>57</sup> *Ibid*, s 36.

<sup>58</sup> Czech Arbitration Act, s 25.

- 7.2.4 An opinion setting out the arbitral tribunal's reasons for the decision shall be attached to the award, unless the parties dispense with this requirement by agreement. This rule also applies to awards recording a settlement between the parties.
- 7.2.5 The written award must be served on the parties and delivered in person. The awards are usually delivered through a postal service provider or by court. If a party refuses to receive the award or does not collect the award within ten days following the date when the postal service provider or court clerk attempted to serve it upon the party, the award is deemed to have been delivered.<sup>59</sup>
- 7.2.6 In addition to being signed by at least two out of three arbitrators or the sole arbitrator, awards in institutional arbitral proceedings before the Czech Arbitration Court are also signed by the President and the Secretary of the Czech Arbitration Court. The award is either announced to the parties orally or served in writing.

### **7.3 Settlement**

- 7.3.1 The arbitral tribunal is required to invite the parties to settle their disputes during the course of the arbitral proceedings. If the parties reach a settlement while the arbitral proceedings are pending, the settlement may, upon application by the parties, be incorporated into an award.<sup>60</sup>

### **7.4 Power to award interest and costs**

- 7.4.1 In principle, the arbitration fees, the administrative costs of the arbitral proceedings and other specific costs incurred by the Czech Arbitration Court are generally borne by the party who loses the case, or are split between the parties in proportion to their relative success. In making its award on costs, the arbitral tribunal may take into account the parties' conduct during the arbitral proceedings. However, each party will generally have to bear its own legal costs, although the arbitral tribunal may order a partial recovery of costs from the other party if good cause is shown for an order in such terms. In such cases the 2000 Decree usually applies.
- 7.4.2 Besides the above arbitration fees, the administrative costs and other costs, there is also default interest on the claimed principal amount which might be claimed by a party. Arbitral tribunals have the power to award contractual or statutory default interest if claimed by the claimant in its statement of claim. Default interest may be awarded either on a contractual basis (if expressly agreed in the main contract), or on the statutory basis.<sup>61</sup>

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<sup>59</sup> Czech Civil Procedure Code, s 49.

<sup>60</sup> See also the Czech International Arbitration Rules, s 34(1).

<sup>61</sup> The Act No. 64/1964 Coll., Civil Code, s 517(2).

## **7.5 Termination of the proceedings**

- 7.5.1 The arbitral proceedings shall be terminated either by an award being issued, or by a decree of discontinuance in cases where no award will be issued (e.g. because the arbitral tribunal declines jurisdiction over the dispute submitted to it for decision). The decree of discontinuance must be adopted, signed, accompanied by an opinion and served on the parties in the same way as an award.<sup>62</sup>
- 7.5.2 The Czech International Arbitration Rules contain a similar provision for the discontinuance of arbitral proceedings without an award if:
- the claimant withdraws the statement of claim;
  - the parties conclude a settlement without incorporating it in an award; or
  - the Czech Arbitration Court rules that it lacked jurisdiction.<sup>63</sup>
- 7.5.3 The provisions on awards contained in the Czech International Arbitration Rules also apply to rulings and orders of discontinuance.

## **7.6 Effect of an award**

- 7.6.1 An award which is not subject to appeal by a second tier arbitral tribunal, or in respect of which the time limit for lodging an application for revision has expired, acquires the force of *res judicata* upon service and thus becomes enforceable in the courts. An award made in institutional arbitral proceedings before the Czech Arbitration Court is final, binding and enforceable.
- 7.6.2 In arbitral proceedings before the Czech Arbitration Court, the arbitral tribunal may also make partial awards (final awards in relation to certain issues in dispute), interim awards (on liability before deciding on quantum), or awards recording a settlement reached between the parties.
- 7.6.3 Generally speaking, these sorts of awards can also be issued in ad hoc proceedings. These issues should always be a matter of agreement between the arbitrator(s) and the parties or agreed in the rules of the ad hoc arbitration.

## **7.7 Correction, clarification and issuance of a supplemental award**

- 7.7.1 Clerical errors, errors of calculation and other obvious defects of a similar nature in the award may be corrected by the arbitral tribunal or, if applicable, by the Czech Arbitration Court, at any time upon an application by a party. Such corrections are made by way of a decree of correction which shall be adopted, signed and served on the parties by the arbitral tribunal in the same way as an award. This might apply also for non institutional arbitral proceedings if agreed in the particular rules.

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<sup>62</sup> See section 7.2. above.

<sup>63</sup> The Czech International Arbitration Rules, s 40.

- 7.7.2 In addition to correcting typing, numerical or other obvious errors in the award, the Czech International Arbitration Rules also provide the arbitral tribunal the power, upon an application by a party that has been filed within 30 days of service of the award, to issue a supplemental award if it appears that the original award failed to deal with all of the claims put forward by the parties.<sup>64</sup> However, this requires the parties to be summoned to a further hearing. This power may apply in ad hoc proceedings only if so agreed by the parties.
- 7.7.3 In addition, the parties are free to agree in their arbitration agreement that the arbitral tribunal's award shall be subject to appeal to a second tier arbitral tribunal consisting of different arbitrators. However, unless the parties expressly make such an agreement, the arbitral tribunal's award will be final and binding, subject only to the limited circumstances in which an award may be set aside by the court.<sup>65</sup> If an appeal procedure has been agreed by the parties, the application for revision must be served on the other party within 30 days, unless otherwise agreed. The appeal process forms part of the arbitral proceedings and the provisions of the Czech Arbitration Act apply thereto.

## 8. Role of the courts

### 8.1 Jurisdiction of the courts

- 8.1.1 The Czech Arbitration Act contains express provisions on the courts' powers in relation to arbitration matters.<sup>66</sup> In particular, the courts have jurisdiction to support the arbitral process in certain circumstances (e.g. by appointing arbitrators, taking evidence and granting conservatory or other interim measures). The courts also have jurisdiction in relation to the challenge and enforcement of awards.

### 8.2 Stay of court proceedings

- 8.2.1 The Czech Republic is a signatory to the New York Convention. When dealing with an action in respect of which the parties have made a written arbitration agreement, the Czech courts are, at the request of one of the parties, obliged to refer the dispute to arbitration unless the said agreement is found to be null and void, inoperative or incapable of being performed.<sup>67</sup>

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<sup>64</sup> *Ibid.*, s 38.

<sup>65</sup> See section 9 below.

<sup>66</sup> Czech Arbitration Act, Part IV.

<sup>67</sup> New York Convention, Art. II (3) (See CMS Guide to Arbitration, vol II, appendix 1.1).

8.2.2 The Czech Arbitration Act does not contain any express provisions regarding the stay of court proceedings commenced by a party in relation to a subject matter that is covered by a valid and binding arbitration agreement. The stay of court proceedings in such circumstances is dealt with by the Czech Civil Procedure Code (as amended).<sup>68</sup> As soon as a court becomes aware, through the respondent, that a case should properly be dealt with by arbitration, it must stay the court proceedings.<sup>69</sup> The respondent must inform the court at the earliest opportunity, as soon as the first contact with the court is established. However, if the parties both declare that they do not wish the dispute to be resolved by arbitration, the court may hear the case.

8.2.3 The court can also hear the case if it establishes that:

- under Czech law, the case cannot be dealt with in arbitral proceedings;
- there is no valid and binding arbitration agreement;
- the claim falls outside of the jurisdiction of the arbitral tribunal; or
- the relevant arbitration body has refused to deal with the case.<sup>70</sup>

8.2.4 Where court proceedings are stayed and arbitral proceedings are commenced within 30 days of service of the order staying the court proceedings, the legal effects of the initial action remain in force (e.g. for the purpose of calculating the applicable limitation period).<sup>71</sup>

8.2.5 Where court proceedings are commenced after arbitral proceedings have been initiated, the court must suspend such proceedings if they relate to the existence, validity or termination of the agreement until the arbitral tribunal has made a decision either as to its competence and/or on the merits of the case.

### 8.3 Preliminary rulings on jurisdiction

8.3.1 The arbitral tribunal has the power to decide on its own jurisdiction. The courts therefore do not have jurisdiction to make preliminary rulings on the arbitral tribunal's jurisdiction (other than indirectly in connection with applications for a stay of court proceedings). However, the parties may subsequently challenge the arbitral tribunal's findings on its jurisdiction by applying to the courts for the award to be set aside for lack of jurisdiction.<sup>72</sup>

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<sup>68</sup> Czech Arbitration Act, s 106.

<sup>69</sup> *Ibid*, s 106(1).

<sup>70</sup> Czech Civil Procedure Code, s 106.

<sup>71</sup> *Ibid*, s 106(2).

<sup>72</sup> See section 9.3 below.

## 8.4 Interim protective measures

8.4.1 As explained at paragraph 5.2.1 above, the arbitral tribunal does not have the power to order interim protective measures or to grant injunctions in support of the enforcement of awards. Thus the courts have jurisdiction upon the application of any party to order a preliminary measure or injunction if, during or prior to the commencement of arbitral proceedings, circumstances arise which are likely to jeopardise the enforcement of the award.

## 8.5 Obtaining evidence and other court assistance

8.5.1 To the extent that the arbitral tribunal is unable to take steps in the arbitral proceedings (due to the limits on its procedural powers), the competent court has jurisdiction to take such steps upon an application by the arbitral tribunal. This relates primarily to the power to compel witnesses, experts and parties to give evidence to the court for use in the arbitral proceedings where such evidence is not voluntarily given to the arbitral tribunal directly. The court will implement the application by the arbitral tribunal unless the requested steps are prohibited by law. When taking its decision, the court shall take all measures necessary to ensure the successful implementation of the application.

8.5.2 The costs incurred by the court in taking the steps applied for by the arbitral tribunal in support of the arbitral proceedings shall be covered by the Czech Arbitration Court or the arbitral tribunal, as the case may be.<sup>73</sup> This provision may at first appear somewhat unusual, but the arbitral tribunal will generally only make such an application if the parties have advanced reasonable funds to the arbitral tribunal to cover the costs of the application. Also, any such costs incurred by the arbitral tribunal in making an application to the court will ordinarily be included in the arbitral tribunal's award on costs.

# 9. Challenging and appealing an award through the courts

## 9.1 Jurisdiction of the courts

9.1.1 An application to the court to take steps to support the arbitral proceedings shall be made to the court within the jurisdiction in which the steps are to be taken. If such a step or measure is to be taken abroad, then the jurisdiction and venue to order such a step or measure shall be the district court within the jurisdiction in which the arbitral proceedings are taking place.

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<sup>73</sup> Czech Arbitration Act, s 20(3).

- 9.1.2 Jurisdiction to hear applications for a declaration that an arbitral agreement is null and void lies with the court that would have so-called “functional” jurisdiction under certain provisions of the Czech Civil Procedure Code or other enactments which would apply, but for the existence of the arbitration agreement (i.e. the level of court allocated to hear the specific case, depending on a variety of complex factors including, but not limited to, the subject matter and the amount claimed). If such an application is heard at first instance by a court that does not have proper jurisdiction, the application will be heard and then referred to a court which has jurisdiction. This process may be lengthy.
- 9.1.3 The venue for applications relating to arbitral proceedings under the provisions of the Czech Arbitration Act is the court seated in the local jurisdiction where the arbitral proceedings are taking place, or have taken place, provided that such places are in the Czech Republic.<sup>74</sup> Otherwise, the court that would have had jurisdiction to hear and determine the dispute were it not for the arbitration agreement shall be the venue for hearing the application.
- 9.1.4 In addition to the general rules on venue, the venue for the conduct of proceedings relating to the appointment of arbitrators and challenge of arbitrators shall be vested in the court at the place or residence of the applicant or respondent, as the case may be, if no venue can otherwise be established in the Czech Republic.
- 9.1.5 When hearing arbitration applications under the Czech Arbitration Act, the courts shall apply the provisions of the Czech Civil Procedure Code.

## **9.2 Appeals**

- 9.2.1 An award cannot be appealed to the court. However, as stated at paragraph 7.7.3 above, the parties are free to agree in their arbitration agreement that the arbitral tribunal’s award shall be subject to review by a second tier arbitral tribunal consisting of other arbitrators.

## **9.3 Applications to set aside an award**

- 9.3.1 The circumstances in which an award may be set aside by the court upon application by a party include the:
- non-arbitrability of the subject matter of the dispute;
  - arbitration agreement being void for other reasons, or having been otherwise terminated or failing to cover the subject matter of the dispute;
  - involvement of an arbitrator who takes part in the decision and has not been named in the arbitration agreement or otherwise duly appointed to decide the dispute, or lacks the capacity to act as an arbitrator;

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<sup>74</sup> *Ibid*, s 43.

- award has not been adopted by a majority of the arbitral tribunal;
- parties have not been given the opportunity to present their case;
- award contains an order against the losing party for relief not claimed by the winning party or the performance of which is impossible or illegal;
- Czech Arbitration Court has decided, in respect of a Consumer Dispute, that it was in breach of consumer protection laws and regulations or was otherwise in breach of good manners or public order;<sup>75</sup>
- arbitration agreement regarding Consumer Disputes does not contain information required by the Czech Arbitration Act or such information is, to a large extent incomplete, incorrect or false;<sup>76</sup> or
- court is satisfied that there are grounds on which it would be possible to apply for a new trial in civil proceedings.<sup>77</sup>

9.3.2 An application to set aside an award must be lodged with the court no later than three months following service of the award on the party seeking to set the same aside. The filing of an application to set aside an award does not have the effect of staying the enforceability of the award. However, the court may, upon an application of the losing party, stay the enforceability of the award if execution of the award would inflict serious harm on the losing party.<sup>78</sup> In cases of Consumer Disputes the court will have a power to stay the enforceability even without the party (consumer) applying for such stay.<sup>79</sup>

9.3.3 As discussed at paragraph 5.1.1 above, the right to object to the award on the basis of the invalidity of the arbitration agreement or the improper appointment of an arbitrator may be lost if the party applying for the award to be set aside on such grounds did not raise an objection to the jurisdiction of the arbitral tribunal before or when presenting its arguments on the merits of the case.

9.3.4 If the court has set aside an award on the grounds that the subject matter of the dispute was not arbitrable, or that the arbitration agreement was void for other reasons, had been terminated or did not cover the subject matter of the dispute, then the court shall upon an application by either party lodged after the judgment on the setting aside of the award, proceed with hearing the matter anew and render a decision.

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<sup>75</sup> This provision will take effect from the date the 2011 Amendment to the Czech Arbitration Act comes into force.

<sup>76</sup> *Ibid.*

<sup>77</sup> Czech Arbitration Act, s 31.

<sup>78</sup> *Ibid.*, s 32. Under the 2011 Amendment to the Czech Arbitration Act, the court may also, upon application of the losing party, stay the enforceability of the award if an application to set aside an award is reasonable.

<sup>79</sup> This provision will take effect from the date the 2011 Amendment to the Czech Arbitration Act comes into force.

## 10. Recognition and enforcement of awards

### 10.1 Domestic awards

10.1.1 An award, which is not subject to revision by a second tier arbitral tribunal, or in respect of which the term for lodging an application for revision has lapsed, acquires the force of *res judicata* when served on the parties and is enforceable in the courts in accordance with the provisions of the Czech Civil Procedure Code.<sup>80</sup>

10.1.2 A party against whom the award is being enforced may in certain circumstances apply for a stay of enforcement, even if it failed to lodge an application with the court for the award to be set aside. In addition to certain grounds set out in the Czech Civil Procedure Code, the application may be based on the following grounds:

- the subject matter of the dispute was not arbitrable;
- the award was not adopted by a majority of the arbitral tribunal;
- the award contains an order against the losing party for relief not claimed by the winning party, or the performance of which is impossible or illegal;
- a party, who can act only through a statutory representative, is not represented in the arbitral proceedings and its acts and measures have not subsequently been ratified; or
- a representative, having taken part in the arbitral proceedings in the name and on behalf of a party, lacks the necessary authority and his or her steps or measures taken have not subsequently been ratified by that party.<sup>81</sup>

10.1.3 If an application for a stay of enforcement is lodged with the court in charge of the enforcement, it shall stay the proceedings and order that the applicant shall lodge an application for the award to be set aside within 30 days. If no such application is lodged, the court shall proceed with the enforcement proceedings. If the award is set aside as a result of such an application, the parties are free to apply to the court to hear the matter anew and to decide the same after the judgment setting aside the award has acquired the force of *res judicata*.

### 10.2 Foreign awards

10.2.1 Czechoslovakia was one of the first countries to ratify the New York Convention and the Czech Republic has become a party to the New York Convention as a legal successor state. New York Convention awards are, therefore, enforceable in the Czech Republic in accordance with the terms of the New York Convention.

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<sup>80</sup> Czech Arbitration Act, s 28(2).

<sup>81</sup> *Ibid*, s 35.

- 10.2.2 In relation to non-New York Convention awards (i.e. awards rendered in countries that are not member states of the New York Convention), the Czech Arbitration Act provides that such awards shall be recognised and executed in the same way as local awards if reciprocity of enforcement is granted by the country from which the award originates. Such reciprocity shall be deemed granted if the respective foreign country declares, in a general way, that awards are enforceable subject to reciprocity.<sup>82</sup> The decision by the court decreeing execution of a foreign award must always set out reasons for its decision. Recognition and enforcement of a foreign award may be refused only if:
- the award has not become effective and enforceable under the law of the country where it has been made;
  - the award suffers from one of the defects as set out in paragraph 9.3.1 above;<sup>83</sup> or
  - the award is contrary to Czech Republic’s public policy.

## 11. Special provisions and considerations

### 11.1 Consumers

- 11.1.1 Consumer Disputes may be submitted to arbitration. However, there are several limitations arising from specific relations regarding consumers, as specified in the UTCC Directive.
- 11.1.2 In recent years, the number of Consumer Disputes that have been resolved by arbitration has grown significantly. The majority of these have been ad hoc arbitrations and the respective arbitration agreements are usually imposed upon the consumers by the party with a stronger bargaining position. The latter often chooses a private, ad hoc arbitration (i.e. not through the Czech Arbitration Court).
- 11.1.3 The difference between the institutional Czech Arbitration Court and ad hoc arbitral proceedings (or even proceedings with other arbitral institutions) is that the Czech Arbitration Court is established by law and is empowered and obliged to issue its own rules (statutes and orders) that require mandatory publication in the Commercial Bulletin (i.e. a publicly accessible periodical for publishing notifications).<sup>84</sup> By contrast, private arbitral institutions are not established by law to resolve arbitration disputes. Czech law does not allow private arbitral institutions to create their own rules or oblige them to publish such rules in the Commercial Bulletin.

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<sup>82</sup> *Ibid*, s 38.

<sup>83</sup> *Ibid*, s 31.

<sup>84</sup> *Ibid*, s 13.

- 11.1.4 As a reaction to the above practice, the Czech courts have issued several decisions which have affected the validity of arbitration agreements referring to ad hoc private arbitral institutions to a considerable extent. The courts held it impermissible for an arbitration agreement concerning Consumer Disputes to only refer to the rules of arbitral procedure or rules relating to the arbitral tribunal's fees of such private arbitral institutions if such rules do not automatically, and in full, become a part of the arbitration agreement and thus binding on both parties.
- 11.1.5 According to these decisions,<sup>85</sup> an arbitration clause for ad hoc arbitral proceedings in Consumer Disputes may be deemed invalid if it does not contain exact and full rules for the direct appointment of ad hoc arbitrator(s) or any other specific manner of appointment and selection of arbitrator(s), full rules of arbitral proceedings and rules regarding the determination of the costs of proceedings. The mere reference to the "rules" of private arbitral institutions could be, in such cases, construed as an ambiguous arrangement and therefore invalid.
- 11.1.6 The 2011 Amendment to the Czech Arbitration Act introduces several changes to arbitral proceedings dealing with Consumer Disputes. The primary aim is to provide wider protection to consumers as they are usually in a weaker position when concluding contracts.
- 11.1.7 According to the 2011 Amendment to the Czech Arbitration Act, an arbitration agreement must be concluded as a specific agreement separate from the actual consumer contract or business terms, otherwise it will be deemed invalid. The business/entrepreneur will be further obliged to explain in detail to the consumer what the consequences of entering into an arbitration agreement may be. This is introduced in response to the current practice when arbitration clauses are contained in small print sections on the back of business terms where consumers may not have a proper chance to be acquainted with the fact or the terms of arbitration or to negotiate the matter.
- 11.1.8 Under the 2011 Amendment to the Czech Arbitration Act, consumers will also be entitled to receive full information regarding the:
- arbitration agreement, which will have to include information on the arbitrator(s) or that the dispute will be resolved by Czech Arbitration Court;
  - manner of commencement of and form of conducting an arbitration;
  - arbitrators' fees and expected expenses of arbitration and manner of their payment and adjudication;

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<sup>85</sup> See for example the decision of Superior Court in Prague No. 12, 28 May 2009 Cmo 469/2008; and decision of the Supreme Court of the Czech Republic No. 32, 21 January 2009 Cdo 2312/2007.

- place of arbitration;
- manner and form of delivery of arbitral award; and
- enforceability of the award.

11.1.9 The 2011 Amendment to the Czech Arbitration Act imposes restrictive requirements on arbitrators. Arbitrators deciding Consumer Disputes will be required to have a university degree and the respective arbitrators will have to be listed in the public list of arbitrators for Consumer Disputes to be maintained by the Ministry of Justice of the Czech Republic.

11.1.10 An arbitrator must inform the parties whether he or she has been involved in any dispute for any of the parties within past three years in order to avoid any suggestion or risk of arbitrator bias in a Consumer Dispute.

11.1.11 Arbitrators dealing with Consumer Disputes will not be allowed to decide a case *ex aequo et bono*.

## 11.2 Employment law

11.2.1 Although not expressly barred, disputes arising from employment relations are usually resolved before ordinary courts and it would be highly unusual to submit these to arbitration. There are also serious discussions as to whether such disputes would even be arbitrable. However, no firm conclusions have yet been reached on this issue.

11.2.2 Similar limitations and comments as those imposed on Consumer Disputes might arguably apply to the potential arbitrability of disputes arising from employment relations. Another limitation to this effect would be the fact that, under Czech law, only disputes relating to claims of a financial or monetary nature may be arbitrable.<sup>86</sup> For example, a dispute as to whether or not an employment relationship had been validly terminated may not be able to be resolved through arbitration due to this limitation.

## 12. Concluding thoughts and themes

12.1.1 The introduction of the Czech Arbitration Act formed the basis for arbitration as a means of resolving commercial disputes in the Czech Republic. More recent developments especially the confirmation of the arbitrability of Consumer Disputes (despite its limitations), the introduction of online arbitration and a

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<sup>86</sup> See paragraph 3.3.1 above.

general acceptance of arbitration as an alternative to ordinary court proceedings for dispute resolution have contributed to the increasing use of arbitration and its growing popularity.

## 13. Contacts

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