The Legal 500
Country Comparative Guides

Czech Republic
MERGERS & ACQUISITIONS

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in Czech Republic.

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CZECH REPUBLIC
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1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

(a) Applicable rules/laws:

The key laws of M&A in the Czech Republic are formed by the Civil Code (Act No. 89/2012 Coll., as amended) together with the Business Corporations Act (Act No. 90/2012 Coll., as amended). Depending on the type of transaction, various other rules may apply such as, inter alia, the following:

- Act on Transformations of Business Companies and Cooperatives (Act No. 125/2008 Coll., as amended, hereinafter “Transformations Act”);
- Act on Takeover Bids (Act No. 104/2008 Coll., as amended);
- Capital Market Undertakings Act (Act No. 256/2004 Coll., as amended);
- Act on Bankruptcy and Modes of its Solution (the Insolvency Act) (Act No. 182/2006 Coll., as amended);
- Act on the Protection of Competition (Act No. 143/2001 Coll., as amended);
- Cadastral Act (Act No. 256/2013 Coll., as amended);
- Labour Code (Act No. 262/2006 Coll., as amended); and

from time to time, specific rules/laws and other legislation apply with regard to the terms and conditions of the concerned M&A transaction, e.g. specific sector rules in regulated industries such as banking, healthcare, insurance, pharmaceuticals, telecommunication, and media.

(b) Regulatory authorities:

With regard to the specific terms and conditions of the M&A transactions, the following key regulatory authorities may be involved in the course of a transaction:

- Czech National Bank as the main regulatory and supervisory authority in the capital and financial markets as well as during the bidding process according to the Act on Takeover Bids;
- Czech Office for the Protection of Competition / European Commission if a merger clearance is required;
- Further sector-specific authorities, such as Czech Telecommunication Authority, Industrial Property Office.

The commercial courts further register some processes and documents related to M&A transactions with the publicly accessible Czech commercial register and collection of deeds.

2. What is the current state of the market?

According to EMIS’s M&A Report, the Czech M&A market continues to be one of the busiest in Central and Eastern Europe with 158 announced transactions in 2019 with an estimated value of EUR 14.2 billion heading with massive transactions in the energy and media sectors. The largest transaction was the joint acquisition of a 50% stake in innogy Grid Holding (energy & utilities sector) by Allianz, Macquarie Group and British Columbia Investment Management. The value of this transaction alone reached EUR 1.8 billion. Another significant transaction on the field of media and publishing was the acquisition by PPF Group of Central European Media Enterprises’ (CME) business with a purchase price of over EUR 623 million for the Czech assets (the total price for the CEE assets reached EUR 1.9 billion).

3. Which market sectors have been particularly active recently?

The EMIS’s M&A Report ranked the real estate & construction market as the most active sector with 48 announced deals (citing in-flow of Asian capital and e-commerce growth as main drivers), the telecommunications & IT market with 28 announced
deals as the second most active sector followed by the manufacturing sector with 27 announced deals.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

The CEE region continues to attract high interest both from international investors and strong domestic and regional players. The Czech Republic is no exception and counts among the CEE leaders in terms of transaction activity, where despite the 16% yearly down-tick in number of deals, the combined deal value saw an increase compared to the previous year.

Having said that, the Czech market being positioned in the middle of CEE area is fairly sensitive to changes in the geopolitical situation, which may impact the Czech market in terms of foreign direct investments in-flow even short or mid-term. Additionally, M&A activity may be affected by the legislation aimed to implement protective measures regarding foreign majority shareholding in key domestic assets and therefore lowering the overall FDI stock.

Sector-wise we expect the Czech Republic to follow CEE trends with further steady M&A growth for technology and telecoms&IT. Czech companies found themselves in the middle of belated need for digital transformation, where they need to reposition themselves to evolve their business models for the digitalisation age. To this extent, clear and strategically planned M&A driven by digitalization may follow the German example and increase its share on M&A significantly in the upcoming years. That being said, real estate & construction are expected to remain the most active sectors in the near future.

5. What are the key means of effecting the acquisition of a publicly traded company?

In line with the Act on Takeover Bids, the key means of effecting an acquisition of a publicly traded company with registered seat in the Czech Republic is by a public offer addressed to the shareholders of the listed company. Besides the aforementioned, the mergers governed by the Transformations Act are also capable of effecting the acquisition and gaining control over the publicly traded company.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

The companies are legally required to make available and publish certain information on its own website. Further information are publicly available from the commercial register including, inter alia, articles of association, details on the business certificates, companies’ bodies, shareholders, financial statements, reports on relations among related entities, transformation projects and others incl. the historical data as of the incorporation of the company. The information on companies’ assets may be available via publicly accessible registers, including the land register, register of intellectual property rights, register of pledges.

As for the exchange of information during the M&A process, the members of the executive bodies are obliged to act in the best interests of the company and must balance the necessity to keep the company’s affairs confidential. With respect to the information that may be sensitive from a competition perspective between the competitors, Czech competition law has no special provisions and/or case law; therefore, general rules in line with European law and practice apply: the exchange of information during the due diligence should be restricted to the minimum required for the purchaser to evaluate the target. In case sensitive data (in particular regarding pricing) needs to be exchanged, it is advisable to provide such information to a clean team only. A clean team can be composed either only of external advisors or of buyer’s representatives who do not have a direct influence on the business conduct and pricing policy.

7. To what level of detail is due diligence customarily undertaken?

Due diligence procedures are usually conducted in a detailed manner, including legal, tax/financial/accounting and technical matters depending on the target company and its assets. If W&I insurance shall be taken out, also insurers expect a customary level of detail of due diligence. Due to legal uncertainties regarding the ownership of real estate, title insurance is often used if real estate forms an important asset of the target.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?
The most common types of companies in the Czech Republic are limited liability company (in Czech: společnost s ručením omezeným) and joint-stock company (in Czech: akciová společnost). Partnerships are less frequently used in the Czech Republic.

The general meeting/shareholders make the most important decisions related to the existence and business activity of the company, including granting an approval of share and some asset deals (e.g. sell of a business enterprise or its part), mergers and other reorganisations, spin-offs or transformations. While it is possible to have further decisions made subject to the approval of the general meeting/shareholders, these are not entitled to issue direct instructions to the board of directors/managing directors as the executive bodies, if not expressly requested. The board of directors/managing directors are appointed by the general meeting (or, if stipulated in the articles of association, by the supervisory board). The supervisory board is responsible for the supervision of the exercising of powers by the executive bodies whereby the establishment of the supervisory board is not obligatory in the limited liability companies. Under the circumstances set forth in the Business Corporations Act, the powers of the board of directors and the supervisory board may be cumulated in the so called administrative board of the joint-stock company.

9. What are the duties of the directors and controlling shareholders of a target company?

The executive bodies are always obliged to represent the company’s interest with due professional care. In respect of M&A transactions, their duties under due care vary depending on the structure and type of the transaction.

If the transaction is structured as a transformation (in line with the Transformations Act), the directors are responsible for the whole transformation and have a wide scope of obligations. The directors are obliged to, among others, prepare the merger/spin-off project, draft the report explaining the transaction in detail or procure the publication of documents; they will usually engage legal, tax and financial advisors in this respect.

In case of transactions which require the approval of the general meeting/sole shareholder, the directors are obliged to send an invitation to the general meeting with additional information about the contemplated transaction, its rationale, information on shareholders’ voting rights and required majorities, and provide the option to participate in the general meeting. As mentioned above, the consent of general meeting is required for major transactions which impact the company’s business activity, the business enterprise or its part, the registered capital and in other cases specified in the Business Corporations Act or articles of association.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

In case of an asset deal in the form of the sale of an enterprise or its part, the trade unions or the employees must be informed on the intended transfer in advance.

In case of M&A transactions falling within the scope of Act on Takeover Bids, the trade unions and the employees must be informed by the bidder and the target company’s board of directors about the publication of the takeover bid, about any other available corresponding documents and about their rights to, inter alia, express their opinion on the bid.

11. To what degree is conditionality an accepted market feature on acquisitions?

In private M&A transactions, conditions precedent (CPs) are rather common. CPs can include legal obligations (such as the necessary approvals of the company’s bodies, obtaining a merger clearance etc.), but can be also agreed upon in the sense of a contractual law by the contracting parties (such as clauses regarding no material adverse changes until closing or declarations and warranties provided by the contracting parties).

Mandatory offers pursuant to the Act on Takeover Bids cannot be made voluntarily conditional.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

In private M&A transactions, an exclusivity can be agreed upon in an agreement. In order for the exclusivity agreement to be enforceable, it is preferable for the acquirer to request a contractual penalty (liquidated damages) in case of a breach to be included in the agreement. Depending on the negotiation power it is however not very common for sellers to accept such contractual penalties.

As in other legal jurisdictions, the acquirer of the target company often obtains exclusivity in the letter of intent, concluded by and between the acquirer and the seller, which ensures the deal exclusivity for the acquirer.
because the seller is obliged not to engage in any negotiations with other potentially interested buyers for an agreed period of time.

Public M&A transactions do not have exclusivity agreements legally strictly restricted; however, due to other limitations, such as an obligation of the executive bodies of the target company to act in the best interest of the company, it is not recommended for the target company to secure the deal exclusivity, because it is usually not in the best interests of the target company.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Regarding public M&A transactions, the executive bodies of the target company may agree to some deal protection measures only if such measures are in the best interest of the target company. Those measures, e.g. no-talk clauses or no-shop-clauses, prohibit the target company’s executive bodies to engage in negotiations with any other interested buyers.

In private M&A transactions, break-up fees (contractual penalties) may be agreed upon. In the absence of such contractual agreement, the acquirer may have claims under the rules on pre-contractual liability in case the seller unreasonably terminates negotiations after inducing confidence that an agreement would be reached; there is however so far very little case law available and contractual penalties, if negotiable, are preferable from the acquirer’s perspective. While not securing the deal as such, earn-outs are increasingly used in the Czech M&A transactions as they protect the buyer from overpaying the future upside of the company.

14. Which forms of consideration are most commonly used?

Cash is still the most frequently used consideration. In private M&A transactions, there is no limitation on the type of consideration that can be offered, i.e. cash, shares, securities or other convertible or exchangeable bonds.

In public M&A transactions, consideration may be paid in cash or shares. The market standard in the Czech Republic involving the public offers involving the Czech target companies are cash payments.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

The Act on Takeover Bids stipulates that in case of an acquisition of the shares in the publicly traded company, the acquirer shall inform the Czech National Bank within 15 days from the date of creation of the notification obligation about the public offer. In case that the Czech National Bank does not prohibit the publication of the public offer, the public offer shall be published within 15 business days or immediately after the delivery of the approval stating that the Czech National Bank does not prohibit the publication of the offer document.

16. At what stage of negotiation is public disclosure required or customary?

Pursuant to the Act on Takeover Bids, once a bidder has decided to make an offer it must publish it without undue delay. The bidder must notify the Czech National Bank as well. The offer document may be publicly disclosed after the Czech National Bank’s approval or, if Czech National Bank does not decide within 15 days, within the following 15 days after that (as mentioned in Question 15).

17. Is there any maximum time period for negotiations or due diligence?

With regard to the public M&A transactions, the public takeover procedure is subject to regulation under the Act on Takeover Bids which does not determine any maximum time period for a phase of negotiations or due diligence. However, the bidder is obliged to publicly disclose an end of validity of a public offer 14 days prior to the date thereof.

In the private M&A transactions, there is no maximum time period for negotiations or due diligence as the time requirements depend on the deal size, structure and complexity. The due diligence phase lasts typically between 4 and 12 weeks and the negotiation phase between 4 and 6 weeks but may significantly vary case by case.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

Regarding the takeover bids, Czech law lays down a minimum price set for the shares in the target company. The bidder shall offer the minimum price or
consideration at least equivalent to the higher of the weighted average stock exchange price of the shares in the target company during the six-month period in relation to the emergence of the takeover bid obligation and the highest consideration paid or agreed to be paid by the bidder or his affiliates within the twelve-month period prior to the emergence of the takeover bid obligation.

There are no special rules governing the consideration within the scope of other types of (private) M&A transactions, except for the equal treatment principle.

19. Is it possible for target companies to provide financial assistance?

Regulation of financial assistance in the Czech Republic is based on the EU legislation. In addition to joint-stock companies, Czech law also regulates financial assistance in relation to limited liabilities companies and allows to provide financial assistance subject to the fulfilment of certain conditions and the completion of the whitewash procedure. The requirements are different for the joint-stock companies and limited liabilities companies.

20. Which governing law is customarily used on acquisitions?

This heavily depends on the parties involved. If both seller and acquirer are Czech entities, the agreement will be governed by Czech law. If any or both of the parties are non-Czech entities and/or non-Czech targets are sold together with a Czech target, the parties may choose another law to govern the main agreement (often in the form of a framework agreement) while the transfer in rem of the shares in the Czech target is sometimes effected by a separate short form agreement subject to Czech law (in particular when shares in a Czech limited liability company are transferred and the SPA under which the shares are transferred in rem has to be filed with and is publicly accessible through the commercial register). Local requirements and formalities laid down by Czech law must be met in order to validly effect the transfer of the shares or other assets (e.g. real estate, patents, etc.).

The acquisitions of the business companies having its registered seat in the Czech Republic and publicly traded outside of the Czech Republic in the course of the public M&A transactions shall be governed by the conditions stipulated in the Act on Takeover Bids.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

In connection with the acquisition of a listed company, the buyer (i.e. the bidder) shall provide the recipients with the public offer with corresponding offer documentation. The offer document is a formal legal document containing detailed information for the shareholders to let them decide if they aim at selling their shares. The offer document must be prepared in accordance with the principles of the Takeover Act and must contain the information regarding the contracting parties, acquired shares, the essential requirements of the share purchase agreement, price, financing, transfer of the shares and other terms and conditions of the offer stated therein.

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

With regard to the transfer of shares in limited liability companies falling within the scope of the private M&A transactions, the signatures of the contracting parties on the ownership interest purchase agreement shall be notarised. After the completion of acquisition of the ownership interest(s) in the limited liability company, the respective changes have to be recorded into the commercial register without undue delay, e.g. the acquirer of the ownership interest(s) as the (sole) member of the limited liability company (even though the registration of the respective changes with the commercial register is of a declarative nature and does not have any impact on the transfer of the ownership interest(s)).

In case of the transfer of the shares in the joint-stock company, the change of the shareholder(s) of joint-stock companies are not subject to registration obligation with the commercial register (except for the case where the purchaser will become the single shareholder) because the shareholders of the joint stock companies are not recorded there unless otherwise stated in the Business Corporations Act.

There is no transfer tax (stamp duty) for the transfer of shares in Czech companies. Other taxes (e.g. withholding tax, VAT in case of asset deals and other) may apply depending on the structure.

23. Are hostile acquisitions a common feature?

The hostile acquisitions are rather rare in the Czech
Republic. The reason for non-occurrence of the hostile acquisitions is that the market in the Czech Republic has limited opportunities for investors, and therefore, there are limited opportunities for the hostile acquisitions to take place.

With regard to the public M&A transactions, the market is quite small and only a few of the companies have their shares publicly traded, therefore, there is not enough room for hostile takeovers.

Moreover, the Business Corporations Act provides the members of the limited liability company with an opportunity to limit the transferability of the ownership interest(s) of other members of the company in the memorandum of association, by the general meeting giving an approval to the transaction or by provision of the pre-emptive rights to the other members' shareholdings in the company.

24. What protections do directors of a target company have against a hostile approach?

The executive bodies are obliged to act with due professional care; therefore, they shall inform the shareholders about the hostile approach and may request an instruction on further steps.

Along with the members of the supervisory board, the members of the board of directors have to maintain loyalty when a bid in relation to hostile takeover appears. They are in principle not allowed to voluntarily adopt any decisions which may affect the shareholders’ opportunity in deciding on the bid or to voluntarily take any action which may lead to rejection of the bid.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

In case that a buyer directly or indirectly acquires a decisive share of voting rights (i.e. a shareholding of more than 30% in a publicly traded joint stock company), the buyer (whether by the share deal or by purchasing the target company’s shares on the stock exchange) has an obligation to publish the acquisition of control and to make a mandatory offer to the remaining shareholders of the target company in order to acquire the remaining shares within 30 days after the buyer acquired the decisive share of the voting rights. Mandatory offers are subject to the minimum pricing rules (as mentioned in Question 18).

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Pursuant to the Business Corporations Act, the minority shareholders of a joint-stock company possess some protective rights in relation to the actual size of the shareholding. The protective rights concern, among others, the matters falling within the scope of decision-making of the general meeting.

First of all, the significant threshold for minority rights is 25% of the votes cast because some decisions of the general meeting, such as a decision to change a type or a form of the shares, to change the rights attached to a certain type of shares or to restrict the transferability of registered shares, require a majority of 75% of the votes cast as stipulated by the law or the articles of association.

Another significant threshold for minority rights is 33% of the votes cast because some decisions of the general meeting, such as an amendment of articles of association, entering into domination or profit and loss transfer agreements, a sale of the business enterprise or its part or creation of pledge over the business enterprise or its part as well as the change of the registered capital, require a majority of 66% of the votes cast by law or the articles of association.

On the top of that, the minority shareholders still possess the general rights of the shareholders; therefore, the minority shareholders still remain entitled to obtain relevant pieces of information and have voting and dividend rights. Amongst other significant rights, the minority shareholder may under certain conditions exercise the sell-out and claim forced sale of shares against a majority acquirer and enjoys priority right to subscribe for new shares in the event of an increase in share capital of the company.

With regard to the limited liability companies, pursuant to the Business Corporations Act, the members of the limited liability company reserve some protective rights in relation to the actual size of the shareholding. The protective rights concern, among others, the matters falling within the scope of decision-making of the general meeting.

The significant threshold for minority rights is 25% of the votes cast because some decisions of the general meeting, such as a decision to amend the content of the memorandum of association, to allow a contribution in kind or to dissolve the company with liquidation, require a majority of 75% of the votes cast by law or the memorandum of association.
27. Is a mechanism available to compulsorily acquire minority stakes?

Under the Business Corporations Act, the majority shareholder that directly or indirectly owns 90% of the shares in a joint stock company or 90% shareholding in a limited liability company preserves a right to squeeze out the minority shareholder(s) with a simple majority vote. The squeeze out is conditional upon a payment of fair compensation to the minority shareholder(s). The minority shareholders have no means to block the squeeze-out but preserve a right to file an application for a review of a compensation by a court and evening up of the compensation (according to the court practise, it is usual to even up of the compensation).

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