



Construction

in 35 jurisdictions worldwide

Contributing editor: Robert S Peckar

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Introduction Robert S Peckar <i>Peckar & Abramson, PC</i>	3
Brazil J�lio C�sar Bueno <i>Pinheiro Neto Advogados</i>	4
Canada Bruce Reynolds, Sharon Vogel and Yvan Houle <i>Borden Ladner Gervais LLP</i>	16
Chile Jos� Manuel Larra�n <i>Larra�n Rencoret & Urz�a Abogados</i>	24
China Wang Jihong, Lin Li, Jiang Jie, Miao Juan and Ma Yuhong <i>Grandway Law Offices</i>	31
Colombia Santiago Jaramillo-Caro <i>G�mez-Pinz�n Zuleta Abogados</i>	38
Czech Republic Gabriel Achour and Jakub Z�myslick�y <i>Achour & Partners</i>	44
Denmark Henrik Puggaard, Lene Lange and Kristian Skovg�rd Larsen <i>Lett Law Firm</i>	51
Dominican Republic Laura Troncoso Ariza and Mair�n Silvestre Ram�rez <i>OMG</i>	58
Egypt Ahmed Amin and Farah El Nahas <i>Shalakany Law Office</i>	64
Finland Aimo Halonen <i>M�kitalo Rantanen & Co Ltd</i>	69
France Isabelle Smith Monnerville and Julien Maire du Poset <i>Smith Violet</i>	74
Germany J�rg Gardemann and Alexander Herbert <i>Buse Heberer Fromm</i>	83
Ghana David Ofosu-Dorte, Isabel Boaten and Ferdinand Adadzi <i>AB & David</i>	89
India Sunil Seth and Vasanth Rajasekaran <i>Seth Dua & Associates</i>	94
Japan Miho Niunoya <i>Atsumi & Sakai</i>	101
Lebanon Rana Kahwag� and Karim Khalaf <i>Alem & Associates</i>	106
Lithuania Jovitas Elzbergas, Valentas Mitrauskas and Donatas Lapinskas <i>Motieka & Audzevi�ius</i>	112
Luxembourg Fran�ois Collot Kleyr <i>Grasso Associ�s</i>	118
Mexico Roberto Hern�ndez-Garc�a <i>Comad, SC</i>	125
Netherlands Leendert C van den Berg <i>Severijn Hulshof advocaten</i>	130
New Zealand Garth Sinclair and Michael Gartshore <i>Webb Henderson</i>	135
Nigeria George Etomi, Efeomo Olotu and Ivie Ehanmo <i>George Etomi & Partners</i>	143
Poland Andrzej Tokaj and Przemyslaw Kastyak <i>Magnusson Kancelaria Prawnicza</i>	148
Qatar Marcus Boeglin, Veijo Heiskanen, Marc Sukkar, Matthias Scherer and Domifille Baizeau <i>Lalive in Qatar LLC</i>	154
Russia Vladimir Lipavsky <i>Ost Legal</i>	160
Saudi Arabia Hani Al Qurashi, Rami Al Qulaiti and Saeed Basuhil <i>Hani Qurashi Law Firm in cooperation with Kilpatrick Townsend</i>	166
Singapore Christopher Chuah and Tay Peng Cheng <i>WongPartnership LLP</i>	171
Sweden Andreas Magnusson, Charlotta W�ls�ter and Per Vestman <i>Foyen Advokatfirma AB</i>	178
Switzerland Michael E Schneider, Matthias Scherer, Bernd Ehle and Sam Moss <i>Lalive</i>	184
Taiwan Helena H C Chen <i>Formosan Brothers, Attorneys-at-Law</i>	190
Turkey Ziya Akıncı and Cemile Demir G�kyayla <i>Akıncı Law Office</i>	196
Ukraine Timur Bondaryev, Svitlana Teush and Volodymyr Grabchak <i>Arzinger</i>	203
United Arab Emirates Thomas Philip Wilson, Rabih Tabbara and Scott Hutton <i>Kilpatrick Townsend Legal Consultancy</i>	211
United Kingdom Stacy Sinclair <i>Fenwick Elliott LLP</i>	217
United States Robert S Peckar and Michael S Zicherman <i>Peckar & Abramson, PC</i>	226

Czech Republic

Gabriel Achour and Jakub Zámyslický

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1 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

The Czech market is generally highly welcoming and accommodating to foreign business entities. Foreign entities may do business in the Czech Republic under the same conditions and to the same extent as their Czech counterparts unless the law stipulates otherwise. They may be founders or co-founders of a Czech company and may become part of an existing local company.

Foreign companies can operate in the Czech Republic by establishing a branch office registered in the Czech Republic or setting up a Czech company. The most common corporate legal forms are the limited liability company (sro) and the joint-stock company (as).

In addition, foreign entities may directly carry out occasional business in the Czech Republic (ie, without establishing a branch office or a subsidiary) under the conditions of the Act on the Free Movement of Services No. 222/2009. This statute allows these entities to provide services of a strictly temporary or occasional nature. Compliance is assessed on an individual basis, having regard to the nature, duration, frequency, regularity and continuity of the services.

2 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Foreign entities aiming to do business in the Czech Republic have the options of founding or becoming a shareholder in a Czech company, establishing a local branch office or providing services on a temporary basis. In the latter instance, there is no need to obtain a special Czech trade licence.

In order to set up a new company or a local branch office, a foreign entity must receive a permit from the relevant local trade licence office. (A branch office is not a Czech legal entity, but the representative of a foreign company that acts on that company's behalf.) There is an exception for certified architects and engineers preparing to set up their own business in the Czech Republic as they require a special authorisation from the local authorities.

Newly formed companies and local branches of foreign companies must be registered in the Czech Commercial Register. For this purpose, they must hold all trade licences (or, for some types of business, all authorisation certificates) required for the activities that they will perform. To obtain a Czech trade licence, foreign persons must prove certain facts stated in the Trade Licensing Act and provide official Czech translations of all required documentation.

Construction work is listed in the Trade Licensing Act (Act No. 455/1991) as an activity requiring a special trade licence. Once an applicant proves that it has met all the requirements to receive a trade licence, the Trade Licence Office will issue a licence excerpt. The applicant then has 90 days in which to apply for registration in the

Commercial Register on the basis of that excerpt. The applicant must provide a full list of all business activities that it plans to undertake on the application form. Once registered, it will only be allowed to engage in these listed activities. Since August 2006, newly formed companies have had the option of applying for registration with the Czech Tax Office for almost all types of taxation at the same time that they apply for a trade licence.

3 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Under Czech law, foreign and domestic entities are treated identically in all areas, and no advantages are offered to domestic contractors that compete with foreign counterparts. The government does not screen any foreign projects related to construction unless they involve the defence sector. The Czech Republic is a member of the OECD, and it has committed to non-discrimination against foreign investors in privatisation sales. The Czech rules on unfair competition are set out under the Commercial Code (Act No. 513/1991). 'Unfair competition' is understood to refer to practices that contravene the standards of good competition and may harm other competitors or consumers. Other binding rules arise under specific Czech legislation (ie, the Economic Competition Protection Act, Act No. 143/2001) as well as European Community law contained in the Treaty on the Functioning of the European Union and other EU Council or Commission regulations. Community law applies across all areas of economic activity in the Czech Republic, including sectors such as construction that are subject to special EC regulations.

4 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

In January 2010, the current Criminal Code (Act No. 40/2009) came into force in the Czech Republic. Key changes under the statute include the criminalisation of bribery committed in connection with business activities, an increase in sanctions for related offences and the extension of the definition of a public official. This Criminal Code prohibits not only the bribery of public officials, but any sort of bribery in connection with 'procuring affairs in the public interest' or doing business. Public officials are also understood to include officials from foreign states and representatives of international organisations. Both bribe-givers and bribe-takers can be prosecuted under the Criminal Code.

Bribery is an offence punishable by imprisonment for up to 12 years, depending mainly on the nature and seriousness of the case.

Facilitation payments are not allowed under Czech law and may constitute bribery.

5 Political contributions

Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

There are no statutory regulations in the Czech Republic that would restrict the ability of a contractor or design professional to work for public agencies because of that person's financial support for political candidates or parties. The financing of political parties is regulated under the Act on Association through Political Parties and Political Movements (Act. No. 424/1991). Under this statute, political parties must submit certain information annually to the Czech parliament's Chamber of Deputies. This information includes a summary of the party's annual financial report featuring an overview of donations and donors indicating total monetary donations. For any person whose total annual donation exceeds 50,000 koruna, the political party must submit copies of the relevant donation agreement. The information in that agreement must be identical to that provided in the overview.

6 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

The Czech Republic is a notably open and free market economy. In general, foreign individuals and legal entities face no restrictions on their undertakings in the country, and they are treated on par with Czech citizens. To a large extent, the Czech legislature has adopted the tenets of European Union law, including standard commercial law principles on economic and consumer protection, mergers and acquisitions, intellectual property and energy.

Czech commercial and private civil law is based on continental civil law principles. As distinct from common law, continental law has its main sources in the written and binding statutes, orders, bills and directives of competent legislative bodies.

7 Construction contracts

What standard-contract forms are used for construction and design?

Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

The Commercial Code sets out general rules covering contracts for work used in construction and design projects. Most of those provisions can be altered by the parties' own agreement. Since the statute does not provide specific solutions to many typical problems arising during the construction process, the parties generally devise their own solutions contractually.

Standard contract forms are seldom used without adaptation in construction and design projects in the Czech jurisdiction. International Federation of Consulting Engineers (FIDIC) forms are, however, often modified in various ways as a contractual framework. Unmodified FIDIC forms are not suited to the Czech jurisdiction.

Under Czech law, these contracts do not need to be concluded in the Czech language.

The contract's binding law may only be chosen in relationships with an international element.

Rules on the venue of court proceedings are set out in the Civil Procedure Code (Act No. 99/1963). An arbitral tribunal may have jurisdiction instead of the courts if the parties conclude an arbitration clause or agreement. That agreement must be concluded in writing. The arbitration agreement may cover a pre-existing dispute between the parties (ie, ad hoc arbitration) or any and all future disputes arising from the legal relationship between the parties.

8 Payment methods

How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Payment for work is usually provided monthly in arrears for the work actually performed. The amount of the monthly consideration is calculated based on a statement of work that the contractor provides. The relevant payer must approve that statement. Contracts for work usually stipulate that the contractor does not receive full payment for its work each month; instead, a specific part of the monthly consideration is withheld until after due completion of all work or, as the case may be, the expiry of the warranty period. The total payment withheld usually represents between 5 per cent and 20 per cent of the total consideration due for the completed work. Every monthly payment is then decreased by this percentage. This deferral of payment serves as security for any claims arising against the contractor for potential defects in the executed work.

Any due payments or part payments are made by bank transfer to the contractor's bank account. The situation for subcontractors, vendors and workers is generally analogous.

9 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

The participants in construction projects in the Czech Republic make use of various widely recognised contractual matrices. It is still most common for developers to engage architectural and design firms to provide architectural concepts and designs. These then form the basis for construction contracts, which are awarded to general contractors as build-only projects. Developers usually appoint project managers to oversee the project execution. These managers do not have a direct contractual relationship with the contractors, and their authority comes solely from their contract with the developer. In some cases, the developer also appoints a construction manager who coordinates the developer's relations with different contractors during the design and construction of the project. Design-and-build and turnkey contracts are not widely used.

10 PPP and PFI

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

While PPP projects are used frequently worldwide for the construction of publicly beneficial buildings (eg, transport infrastructure), this has not been the case in the Czech Republic. One of the reasons is the persistence of unclear legislation in this area despite the adoption of relatively recent specific laws on PPP and PFI projects (eg, the Act on Concession Contracts and Concession Procedure No. 139/2006).

When PPP projects do take place in the Czech Republic, the contractor is chosen through a special concession procedure set out in the governing legislation; the contractor then concludes a concession contract with a public body to execute the project. By entry into this concession contract, the public body authorises the contractor to carry out the project at its own costs and to collect profit from the project's operation. The substantive rights under this contract cannot be assigned as a matter of law.

11 Joint ventures

Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Joint ventures in the Czech Republic can take various forms. There are two basic types of joint ventures: institutionalised and contractual joint ventures.

In an institutionalised joint venture, members of the joint venture form a separate company, which is a legal person. The joint venture members are partners or shareholders of this company.

Contractual joint ventures are based solely on an agreement among the members of the joint venture. No new legal entity is created in this kind of joint venture. The contract among the joint venture members may take different forms and variously approach issues such as the degree of mutual integration, the diversification of risks, roles and functions, including management of the joint venture, the scope of funding and the method of apportionment.

For any institutionalised joint venture, the company and its management are legally responsible for the project. In principle, members of the joint venture as company partners or shareholders are not legally liable for the company's obligations. Commercial responsibility for the project may be divided among the members of a joint venture by their mutual agreement.

In contractual joint ventures, on the other hand, the allocation of responsibility for the project depends on the contract among members of the joint venture. The members may be jointly liable or the liability may be allocated among them.

12 Tort claims and indemnity

Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

If a contracting party violates its obligations, it is responsible for damage caused to the other party by that breach. The amount of damages may be reduced according to the injured party's contribution to its own loss. The injured party's contribution may stem from its negligence. As a rule, a general contractor is liable to counterparties for the performance of any subcontractor through which the general contractor fulfils its obligations. Thus, the contractor will need to compensate the commissioning party for any harm it incurs owing to the contractor's breach of duty even if that breach was in fact wholly or partially caused by the act, error or omission of a subcontractor. The subcontractor must, in turn, indemnify the contractor against all damage caused by the subcontractor. The subcontractor may bring a counter-claim if it considers the general contractor was negligent.

A contractor will not be liable for damage caused by a breach of its duty resulting from a force majeure-type event, namely, an obstacle that arose independently of the contractor's will and prevented it from performing its duty, provided that the contractor could not reasonably have been expected to avert or overcome the obstacle or its consequences and that the obstacle was unforeseeable when the contractor undertook its obligation. If a subcontractor caused this breach, the general contractor will only be exempt from liability if both the subcontractor and the general contractor meet the criteria in the previous sentence.

13 Liability to third parties

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

According to the Commercial Code, a contractor that constructs a building that is sold or leased to a third party is liable for any damage incurred by that or another third party as a result of construction defects. Such third parties may pursue a civil law claim against the contractor despite the lack of contractual privity. In this scenario, the contractor could also face criminal liability under the Criminal Code for any injury or harm resulting to a third party or its property due to the contractor's negligence. The contractor may be found guilty of a further statutory offence if it has breached building regulations.

14 Insurance

To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards. Does the local law limit contractors' liability for damages?

Contractors in building projects in the Czech Republic may obtain two basic types of insurance: all-risk construction insurance and insurance against liability for damages.

All-risk construction insurance covers any damage or destruction of the insured object (including both built-up structures and the surrounding land plot). Common exemptions from this coverage include damage caused by acts of war, the contractor's fraud and nuclear energy accidents. In some cases, there may also be exceptions that are closely linked to construction work, for example, for damage caused by faulty design documentation (if the contractor knew or could have known about the defect in the documentation) or by not following relevant technical standards or technical processes.

Insurance against liability for damage protects the contractor in the event that it causes harm to another person's health, life or property. To ensure coverage, the harm must arise in connection with the execution of construction work by the contractor (or its agent); it must also happen during the insurance period and at the insured site or in its immediate vicinity. Even in these cases, the common exemptions mentioned above apply.

In their basic form, these two types of insurance do not protect the contractor against damage caused by project delays or environmental hazards.

All-risk construction insurance may, however, include advance loss of profits insurance (ALoP) as an optional component. This insurance covers cases where the profit the investor anticipated on completion of the work has not materialised due to delays. This insurance is used, for example, in the construction of assembly halls, highways, technological equipment or production lines.

Environmental risk insurance is another standard insurance product that is available beyond the above-mentioned basic types of insurance.

As a general rule, contractors are liable for any harm caused by their actions. They are responsible for both the damage sustained and lost profits. They are not liable, however, if they prove that the relevant infringement arose from force majeure circumstances. (For a fuller discussion of force majeure events, see question 21.)

15 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Companies face no limitations or quotas in respect of their use of local labour on a particular construction project under either the Czech Employment Act (Act No. 435/2004) or the Labour Code (Act No. 262/2006). Companies established in the Czech Republic that hire locally must follow relevant Czech legislation in respect of both their local and foreign employees. In particular, their non-Czech hires must hold all relevant working permits and meet the other residence requirements of the Czech Foreigners' Police Department.

Public procurement contracts are the sole instance where limits may apply to the use of non-Czech employees. Applicants may need to demonstrate that they will employ a certain percentage of local staff to qualify for award of the public contract.

16 Local labour law

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

Employment issues in the Czech Republic are tightly regulated under both the current Labour Code and the Employment Act. These rules apply to all employers and employees in the Czech Republic,

irrespective of whether the employees are local or foreign hired persons. Employment relationships in the Czech Republic are established in most cases via an employment contract. They may also arise, however, from the employee's election or appointment to his or her position. Employment contracts must be executed in writing and contain all information required by law. Employment may be terminated by mutual agreement, by the serving of termination notice (either by the employer or the employee), by immediate termination or by termination during the trial period. Czech law does not prohibit collective dismissals due to the closure of the employer's business (eg, due to bankruptcy or liquidation) or its relocation. In such situations, the employer must notify the employees' committee or, as the case may be, the relevant trade unions, as well as the local labour office, at least 30 days before delivering termination notice to its employees. When terminating an employment relationship, the employer must issue:

- an employment certificate to the employee specifying the information required by law; and
- a statement of the employee's average earnings during the employment period.

The employer must also provide a work report about the employee no later than 15 days after receiving a request to do so from the employee.

17 Close of operations

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

A foreign company operating in the Czech Republic that wishes to close its business will need to follow the same termination process as its local counterparts (or local entrepreneurs). First of all, the company will need to apply to cancel its trade licences at the relevant trade licence office (as per section 58, paragraph 1, letter c of the Trade Licensing Act). It will then need to inform the relevant tax office that it intends to file its tax return within the legal deadline. Further, the company will need to submit relevant forms to all concerned health insurance companies and social security administration authorities about the termination of employment of its employees and this obligation must be fulfilled no later than eight days after the termination of their employment. The employer must also consider whether the termination of contracts with several or all employees amounts to a collective dismissal under section 62 of the Labour Code; if so, it must comply with the requirements of that provision. Finally, the foreign company must file an application with the relevant court to delete its business or branch from the Commercial Register.

18 Payment rights

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Under Czech legislation, a contractor does not have any express right to security for the payment of the counterparty (eg, property owner) in a construction project situation. As a general rule, however, if it becomes obvious that the counterparty will not honour its obligations, the contractor may refuse to fulfil its duty upfront until the counterparty delivers or sufficiently secures its payment. The contractor may stipulate an appropriate time limit for this performance or security provision. If that deadline expires in vain, the contractor may withdraw from the contract. Where the counterparty has been declared bankrupt, the contractor may withdraw immediately from the contract, namely, without providing this additional time limit.

In principle, the parties may agree contractually on specific security for the contractor's right to payment of the work fee and costs, but this is not standard. Liens over property in favour of the contractor are not used in practice.

19 Contracting with government entities

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

In the Czech Republic, a government agency cannot assert sovereign immunity as a defence to a contractor's claim for payment.

20 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

As described in question 18, if it becomes obvious that the commissioning party will not honour its side of the contract, then a contractor may refuse to fulfil its contractual duties until the counterparty renders or sufficiently secures its obligations. Where bankruptcy has been declared over the commissioning party, the contractor may exit the contract immediately.

As a rule, the contractor will only have priority over other creditors in the bankruptcy proceedings if its claims against the commissioning party are secured. Otherwise, the contractor will have the same standing as other ordinary creditors.

21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

There is no legal definition of force majeure or acts of God in the Czech jurisdiction. The Commercial Code stipulates, however, that any party that breaches its duty must provide compensation for damage resulting to another person, unless the duty holder proves that the breach was caused by circumstances exempt from liability. Exempt circumstances mean any obstacle that arose independently of the duty holder's will and prevented this party from performing its duty, so long as party could not reasonably be expected to avert or overcome the obstacle or its consequences and the occurrence of this obstacle was unforeseeable at the time when this party undertook its obligation. These liability exemptions tend to cover situations generally understood as force majeure events in other jurisdictions.

In their contract, the parties may agree on exemptions from liability that are broader than the statutory provision.

Where a party breaches its duty owing to circumstances exempt from liability, it is not bound to provide any compensation. It must, however, inform the counterparty of the nature of the obstacle that prevented the performance of its obligations and of the consequences.

Generally speaking, where it is impossible to fulfil key obligations under a contract, that contract will be terminated under the Commercial Code. In that case, a debtor under the terminated contract will be liable for damage that the termination causes to its former (contractual) creditor. If, however, the contract became unviable because of circumstances exempt from liability, the debtor's duties will cease to exist on the contract's termination and it will not be liable for the damage resulting to its former creditor.

22 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

There is no specialised tribunal dedicated to resolving construction disputes in the Czech Republic. However, general civil courts include divisions that focus on commercial disputes. As a general rule, these divisions hear commercial disputes whose value exceeds 100,000 koruna.

23 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Dispute resolution boards are not used often in the Czech Republic, they are only involved if the disputing parties have arranged for this in their contract. This contract will also determine the effect of the board's decision. In general, the decisions of DRB are not enforceable. To achieve this enforceability, the parties must conclude a contractual arbitration clause that regulates the DRB's operation. Such a clause will change the status of the proceedings to arbitration and their outcome to a final arbitral award.

24 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

In September 2012, the current Mediation Act (No. 202/2012) came into force. This is the first Czech legislation on mediation; it marks the first time that mediation has received institutional support under Czech law. To date, mediation has not had any institutional backing in the Czech jurisdiction and it remains unusual as a dispute resolution method.

At present, mediation is mainly used in the area of family law in the Czech Republic. Its application to other areas (including construction) is rather sporadic.

Any natural person who qualifies under the Mediation Act can become a mediator. The basic requirements are graduation from a university and successful completion of a special mediation examination. This examination has written and oral parts. Its main purpose is to verify the candidate's knowledge in relevant areas of law, communication and social psychology as well as his or her ability to manage the mediation process and to effectively assist the parties to reach agreement.

25 Confidentiality in mediation

Are statements made in mediation confidential?

In the Czech Republic, confidentiality is a fundamental principle of mediation that is protected to some degree by statute. Under the Mediation Act (No. 202/2012), the mediator must respect the confidentiality of all facts that he or she learns in preparing and carrying out the mediation. This statutory confidentiality obligation does not bind the parties to the dispute although they may decide to maintain confidentiality as part of the mediation agreement or under another contract.

26 Arbitration of private disputes

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Construction disputes in the Czech Republic are generally resolved through litigation before a general court or by arbitration. As noted above, other dispute resolution methods are not well-established in the jurisdiction.

Arbitration proceedings are significantly shorter than court proceedings. Against this, the outcomes of arbitration are more unpredictable. In addition, there is generally no right of appeal against an arbitration award and a court will only overturn this award on very limited grounds specified by law. If an arbitration award is cancelled, the dispute resolution will resume in arbitration and not in court proceedings.

International arbitration is becoming more common in disputes about large-scale construction projects (eg, airports, etc) involving international contractors. Arbitration clauses are also appearing more frequently in contracts in the Czech jurisdiction largely because

of the comparative speed of arbitration. For the time being, however, litigation remains a more common means of resolving construction disputes in the Czech Republic.

27 Governing law and arbitration providers

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

International arbitration is only used in a small number of cases to settle disputes arising in the Czech Republic: these are always high-value transactions that do not involve a public entity contract. The most commonly used arbitration tribunals are (in order of popularity) the International Chamber of Commerce (ICC) Court of Arbitration in Paris, the Zurich Chamber of Commerce Arbitration Court and the London Court of International Arbitration. The ICC Court of Arbitration in Paris is most popular because it gives the parties a high level of administrative control over the arbitral process while maintaining quality control. It is the largest dispute resolution institution in the world, and construction and engineering disputes account for a large number of its proceedings. As noted in question 26, arbitration is not very common in construction cases in the Czech Republic due to the high costs that it entails.

28 Dispute resolution with government entities

May government agencies participate in private arbitration and be bound by the arbitrators' award?

Czech law recognises the state and its institutions as legal persons subject to the same rules as other legal entities. Both the government and its agencies may participate in private arbitration and be bound by arbitral awards.

29 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

The Czech Republic is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) of 1958. Local courts apply this treaty when enforcing foreign arbitral awards.

30 Limitation periods

Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

Under Czech law, the statutory limitation period for standard civil claims is three years while a four-year limit applies to commercial cases. Generally, the statutory limitation period starts running from the time when the claimant should first reasonably have brought the claim. It will stop running when the lawsuit is filed.

If a claim relates to defective work, then the claimant may only bring an action once certain statutory preconditions are met, and the statute of limitations will only begin running from that time. In particular, the claimant must first report any alleged defect to the contractor within the statutory notification period. Under the Czech Commercial Code, this notification must happen 'without undue delay' from the time that the claimant discovered or should have discovered any evident defect in the work; the maximum time limit for this notification is five years from the date of handover of the work in commercial real estate cases, and two years from this handover date in other commercial matters. After the notification, if the contractor does not take action to resolve the alleged defect in a reasonable time, the claimant may generally launch court action.

Failure to serve this notification, on the other hand, will extinguish the claimant's rights in respect of the defect.

Unless the parties expressly agree otherwise in their contract, a debt will generally become due and actionable in the Czech jurisdiction if the debtor receives a request for its performance and fails to satisfy that request in due time. 'Due time' in this case means within the deadline stated in the request, or within a reasonable time from receiving the request if no deadline is given.

The proceedings will commence immediately after the lawsuit is filed. To maintain the proceedings, the claimant should provide all due assistance to the court.

31 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

The Czech Republic is a party to almost all major international conventions on environmental protection and a member of many important international organisations focused on ecological conservation. The main national legislation on environmental protection is the Act on the Environment (No. 17/1992), which sets out basic principles and penalties surrounding environmental damage. In the field of construction, the Zoning and Building Code (Act No. 183/2006) prescribes rules for the preservation of the environment in the planning of land use and construction. The Act on Assessment of Environmental Impact (No. 100/2001) is another key law that should be considered before starting construction.

32 Local environmental responsibility

What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

The Environment Act (No. 17/1992) is the main national legislation on environmental protection.

No environmental burdens are permitted in excess of the stipulations in the Environment Act and other relevant Czech legislation. Interference with the environment (including the exploitation of natural resources and the construction and demolition of buildings) may only take place after an environmental impact assessment takes place. All persons are obliged to prevent pollution and environmental damage and to minimise the consequences of their actions on the environment. Anyone who discovers environmental damage is obliged to take measures to avert or mitigate the resulting risk.

Any person who causes environmental damage is obliged to restore the natural functions of the damaged ecosystem. If this is not possible, they must remedy the environmental damage in another way or pay financial compensation.

Fines may be imposed on anyone who causes environmental harm. Damaging the environment or threatening to do so may also constitute a crime. Under Czech law, legal persons can be criminally liable.

33 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

The Czech Republic is a member of the Multilateral Investment Guarantee Agency (MIGA), which is part of the World Bank International Monetary Fund group. MIGA is an international organisation for the protection of investments. The Czech Republic has signed more than 80 bilateral and multilateral treaties that protect foreign investments; these include treaties with Belgium, China, Italy, Luxembourg, Switzerland, the United Kingdom, the United States and many other countries. The treaties set out the non-discriminatory framework on which basis each party must permit and treat the investments and associated activities of the citizens and residents of the other party. The treaties are always issued in the Czech language and the language of the counterparty or counterparties.

34 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

The Czech Republic has entered into many taxation treaties to prevent double taxation in the Czech jurisdiction and the jurisdictions of the other contracting countries. It has concluded these treaties with all other European Union countries, and with 70 additional countries, including Australia, Canada, Switzerland, the United Arab Emirates, the United Kingdom and the United States. Double taxation treaties cover taxes on dividends, interest and royalties. The exact method for preventing double taxation is stated in the individual treaty between the Czech Republic and the other country.

35 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

The Czech koruna is the Czech Republic's official currency. The exchange rate is based on a managed floating system with no predetermined course; it is calculated according to supply and demand on the foreign exchange market. The Czech National Bank has the right to intervene in the exchange market to control volatile swings in the exchange rate. Commercial banks can set their own exchange rate

without restriction. Exchange controls and regulations are administered by the Czech National Bank and the Ministry of Finance. Almost all of these controls have been removed, however; the exceptions are controls on investments by non-residents in the air transport sector and controls on lotteries. There is also a partial exemption related to controls on the real estate investments of non-residents.

Non-residents, including individuals and branches of foreign companies, may repatriate Czech koruna into foreign currency or transfer funds from their koruna account to a destination abroad without restrictions. This includes the repatriation of profits.

Some transactions must be reported subsequently to the Czech National Bank for the purpose of balance-of-payments statistics. These include fund movements of 1 million koruna or more in value between resident and non-resident legal entities and transactions of 306,000 koruna or more in value if they involved a Czech bank or institution.

36 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

No express limitations apply to the distribution and expatriation of profits by Czech subsidiaries to their parent foreign companies. Limited liability and joint-stock companies must only meet their obligations to generate mandatory reserve funds and pay withholding taxes. In practice, foreign investors in the Czech Republic are allowed to freely transfer profits and capital throughout the EU and to third countries, but these transfers must be declared subsequently to the Czech National Bank for statistical purposes. In addition, certain limitations apply to transfers in accordance with Czech and EC rules surrounding taxation, prudential supervision, public policy considerations, money laundering and financial sanctions agreed under the EU Common Foreign and Security Policy.

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