

# Czech Republic

Vladimir Uhde, Robert Klenka and Miloslav Strnad  
BBH, advokatni kancelar, v.o.s.

[www.practicallaw.com/5-502-1556](http://www.practicallaw.com/5-502-1556)

## TYPES OF DISPUTE RESOLUTION

### 1. Please give a brief overview of the main dispute resolution methods used in your jurisdiction to settle large commercial disputes, identifying any recent trends.

Anyone can claim their rights in court and the civil trial is the standard resolution method in the Czech Republic. The civil proceedings are governed by the Civil Procedure Code (*Act No. 99/1963 Coll.*) (CPC). Certain matters may also be resolved in criminal proceedings (for example, compensation for damage).

Recently, arbitral proceedings have become a commonly used instrument for the settlement of commercial disputes. Although it formerly covers the settlement of international disputes, the arbitral settlement of disputes is more often chosen by parties to intra-national relationships. It has become standard for parties to commercial agreements to stipulate an arbitration clause in their contracts. The arbitral proceedings are governed by the Arbitration Act (*Act No. 216/1994 Coll., on Arbitration Proceeding and Enforcement of Arbitral Award*).

## COURT LITIGATION - GENERAL

### 2. What limitation periods apply to bringing a claim and what triggers a limitation period? Please briefly set out any different rules for particular areas of law relevant to large commercial disputes, for example contract, tort and land disputes.

The limitation period principle in Czech law comprises the:

- Expiration of the limitation period.
- Respondent pleading the expiration of the limitation period in court.

If these conditions are met, the claim cannot be awarded by the court.

In certain cases defined by law, a right must be claimed in court within a certain period of time otherwise it ceases to exist (this is known as preclusion). There is no need to plead preclusion and the court should respect an existing preclusion. For example, the right to waive or reduce rent must be exercised with the lessor without undue delay (*section 675, Civil Code (CC)*). This right ceases if is not exercised within six months from the day on which the relevant facts occurred.

For business relationships, the Commercial Code specifies limitation periods and the following general rules:

- Every commercial obligation right is subject to a limitation period, apart from the right to repudiate an indefinite-term contract.
- The general limitation period is four years, and special limitation periods are provided (for example, the limitation period for the right to redress damages for delayed delivery or loss incurred with transported objects is one year).
- The obligor can prolong the limitation period in a written statement, but the total limitation period cannot exceed ten years.

The following circumstances are generally relevant for the start of a limitation period:

- The right for fulfilment is enforceable by action, that is, the first day the right could be exercised in court is relevant (for example, the right for monetary payment).
- The right for realisation of a legal act begins the first day the legal act could be realised (for example, right to terminate an agreement).
- The right from a tort arises on the day the tort is committed. However, for compensation of damage it starts on the day when the aggrieved party learned, or could have learned, of the damage and of the identity of the liable party, but expires no later than ten years after the occurrence of the breach.

There are also other special provisions regulated to the commencement of limitation periods.

The limitation period for non-commercial relationships is governed by the CC. The main difference is that the general limitation period is three years.

### 3. Please give a brief overview of the structure of the court where large commercial disputes are usually brought. Are certain types of dispute allocated to particular divisions of this court (for example, IP, competition or maritime disputes)?

Generally, competence to hear commercial disputes is accorded to the regional court determined by the location of the debtor (that is, the registered seat for a legal entity or the place of residence for a natural person).

Courts generally comprise a chairman, vice-chairman, presiding and other judges. Commercial disputes are resolved by a panel of judges comprising the presiding judge and two judges.

Courts are divided into sections and disputes are allocated according to the work schedule. Judges in commercial senates are often specialised in certain matters (for example, bills of exchange, unfair competition, and so on), depending on the court.

Certain commercial matters can only be submitted to special courts or courts with special competencies, such as:

- Appellate reviews of administrative bodies. The regional court in Brno is competent to review decisions of the Office for the Protection of Competition.
- The regional court in Jihlava is competent to review decisions of the Energy Regulatory Office.
- Insolvency matters.
- Commercial Register matters.
- Industrial property disputes, which are heard in the Municipal Court in Prague.

---

#### 4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought and what requirements must they meet? Can foreign lawyers conduct cases in these courts?

---

Each party to the dispute has sole discretion of whether to choose to be represented by a lawyer/attorney or by anybody else, or remain unrepresented. The general requirement is that the representative must both:

- Be competent to perform legal acts (that is, he has attained the age of 18 or is married (if younger)).
- Have been given special powers of representation by the party.

A party can have only one representative for its dispute, but the representative can authorise another representative, in particular, if the representative is an attorney.

Foreign lawyers can represent a party before Czech courts if they are listed in the Register of Lawyers maintained by the Czech Bar Association or have similar status in an EU member state. Foreign lawyers from third states may also represent a party before Czech courts if there is a particular agreement with the Czech Republic. Czech is the language of these litigation proceedings.

### FEES AND FUNDING

---

#### 5. What legal fee structures can be used? For example, hourly rates, task-based billing, and conditional or contingency fees? Are fees fixed by law?

---

The manner of remuneration is agreed between the client and the legal representative. It is possible to agree on an hourly rate basis, task-based fee or success fee. No agreement can be in conflict with good morals.

If an attorney's fee is not set by contract, it is governed by Decree No. 177/1997 Coll., on attorney's tariff. The rates provided in the Decree are considerably lower than fees commonly used in the prosecution of large commercial disputes.

In relation to reimbursement claims of legal representation costs in a proceeding, the court can award only a regulated amount of costs by law (*see Question 21*).

---

#### 6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

---

##### Funding

Proceedings are usually funded by the parties themselves. A party is not restricted from asking third persons for assistance with financing litigation expenses, including lawyers' and court's fees. This may take the form of a standard loan or the provided financial means may be returnable under an agreed proportion of an awarded sum.

In cases of joint action/defence, the parties can agree on joint legal representation to save costs.

The parties may also ask the court for an exemption from court taxes and for free representation. This is conditional on the person's poor financial state and is, therefore, not usual in commercial matters.

##### Insurance

Parties are free to conclude a contract of insurance with a private insurance company. Portfolios of insurance for legal costs are very limited in the Czech Republic.

### COURT PROCEEDINGS

---

#### 7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

---

The court proceeding hearings before the courts are generally public. However, the documents and information in the file are accessible only to the parties. Third persons with non-public status can be granted limited access to these files, but only after a respective court's decision on their legal interest in the case.

The public can be expelled from a hearing if it could endanger:

- The secrecy of classified information (*Act No. 412/2005 Coll., on Protection of Secret Information*).
- Business secrets.
- The rightful interests of the parties.
- The morality and proper conduct of the proceeding.

---

#### 8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

---

The CPC does not impose rules on the claimant's pre-action conduct. Respondents or other persons may have to comply with a preliminary injunction issued by the court (*see Question 12*).

---

**9. Please briefly set out the main stages of typical court proceedings, including the time limits (if any) for each stage, any penalties for non-compliance and the role of the courts in progressing the case. In particular:**

- **How a claim is started.**
  - **How the defendant is given notice of the claim and when the defence must be served.**
  - **Subsequent stages.**
- 

### Starting proceedings

Proceedings start with the filing of a motion called an action. It must contain certain general and special requirements determined by law. Claimants must state the relevant circumstances for their case, attach written evidence and explain what they are asking the court for. An action may be filed in hardcopy or electronic form with an authenticated signature.

### Notice to the defendant and defence

Defendants are notified by the court with delivery of the action. Defendants are not provided with copies of enclosures (evidence) and they must visit the court's file to obtain copies. If the court chooses not to hold a preparatory hearing (*see below, Subsequent stages*), it usually requests defendants to make a statement to the claim and provides a 30-day period. If a defendant does not submit their defence within this period, it is deemed as acknowledged. In this case, the court may award the claim without factual state findings, if the defendant has been informed of the consequence of his non-response.

### Shortened proceedings (order to pay/promissory note order to pay)

If a claimant demands monetary payment and the exercised right follows from the facts stated in the action, the court can order the defendant to pay the claimant the exercised receivable and the costs of the proceedings or file a protest with the relevant court within 15 days. This protest may be unsubstantiated, but its filing terminates the effects of the order to pay which would otherwise become a final decision in the case.

The court must issue a promissory note order to pay if the claimant submits both:

- An original of a promissory note (if there are no reasons to doubt its authenticity).
- Other documents necessary for the exercise of the right.

The respondent must then provide its defence within three days after the action is delivered to it together with corresponding court request. If the respondent fails to do so, the order becomes a final decision.

### Subsequent stages

**Preparatory hearing.** If there is no or a limited possibility to take a decision after one hearing or for other reasons, preparatory hearings may take place following a new concentration rule imposing the obligation that parties provide the court with all relevant assertions and evidence proposals before the end of the first hearing in the case. No other assertions and evidence

can be accepted by the court. When a party lacks assertions or evidence, the court must inform such party that if it fails to provide additional assertions or evidence, it must decide against the party.

**Hearing/executing and weighing evidence.** Unless otherwise stated by law, the presiding judge must order a hearing to discuss the matter's merits. The parties must be served the summonses to the hearing in principle at least ten days before the hearing is to take place so that they have enough preparation time.

The facts of the case are generally established by the court to the extent of providing/determining the parties' evidence. The court does not take into account anything that was not proven by the parties and there is no duty to provide evidence or help any party providing the evidence. The burden of proof lies with the parties. However, the court is limited in providing evidence other than that the parties proposed, even if it seems to be relevant to the decision or was already provided by the documents in the file.

**Time of the proceedings.** Once proceedings have started, the court should proceed in order to hear and decide the case as quickly as possible. However, there are no firm terms for a court to decide a case. The usual length of proceedings before courts of first instance is between one and two years, depending of the complexity of the case and amount of evidence provided.

**Decision.** Regarding the merits of a case, the court issues a judgment in which it must explain its decision, including the weighing of evidence, factual findings and legal examination. The court must also inform the parties about the possibility to appeal against its judgment within 15 days of its delivery. A proceeding may end without a decision on the merits of the case, for example, if the claimant withdraws its claim. After the first hearing, the claim may be withdrawn by the claimant only with the respondent's consent.

---

## INTERIM REMEDIES

**10. What actions can a party bring for a case to be dismissed before a full trial (for example, summary judgment or for a claim to be struck out)? On what grounds must such a claim be brought? Please briefly outline the procedure that applies.**

---

Czech law does not recognise any action for a case to be dismissed before a full trial. In principle, if an action is properly filed, it falls within the competence and jurisdiction of the court, and the claimant reimburses the court tax, the case will be decided on the merits unless the parties reach a settlement or the claimant withdraws the action.

**11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?**

---

Czech law makes no provision for a defendant to request that the claimant provide security for the defendant's costs.

Security is required from the petitioner only to reimburse potential damages caused by its actions, in particular, in connection with preliminary orders or insolvency petitions.

**12. In relation to interim injunctions granted before a full trial:**

- Are they available and on what grounds are they granted?
- Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
- Are mandatory interim injunctions to compel a party to do something available in addition to prohibitory interim injunctions to stop a party from doing something?

The court can issue an interim injunction before or anytime during a proceeding if:

- A party applies for the injunction.
- There is a need to settle the legal relations of the parties or if the execution of a judicial decision could be threatened.

The petitioner must attach relevant documents evidencing their assertions. If an injunction is issued before the full trial, the court must request that the petitioner submit a corresponding action within a stated period. Failure of the petitioner to do this may lead to the termination of the injunction.

Courts must decide these applications without delay, without a hearing between the parties and without notifying the defendant. A preliminary injunction can be issued by a court on the same day in urgent cases. However, courts usually decide in a general time limit of seven days after the application provided by the CPC.

In principle, an interim injunction can, according to the CPC, compel a party (or a third subject) to do something, refrain from doing something or to suffer something. In principle, the purpose of an interim injunction is not to supply a final judgment. For example, if the subject of a case is the surrendering of shares, the court must not order a defendant to surrender the shares to the claimant in a preliminary injunction.

**13. In relation to interim attachment orders to preserve assets pending judgment or a final order (or equivalent):**

- Are they available and on what grounds must they be brought?
- Can they be obtained without prior notice to the defendant and on the same day in urgent cases?
- Do the main proceedings have to be in the same jurisdiction?
- Does attachment create any preferential right or lien in favour of the claimant over the seized assets?
- Is the claimant liable for damages suffered as a result of the attachment?
- Does the claimant have to provide security?

If the other conditions for interim measures are met (*see Question 12*), a party can be ordered to stop disposing of certain objects or rights, to preserve a future final judgment. This may also include an order not to dispose of certain immovable or movable property. It cannot create any preferential right or lien. These matters might only be subject to a full civil trial.

Unless otherwise provided by law, courts competent to order an interim measure must be competent to decide the merits in civil proceedings. If the court requested to order a preliminary measure is competent for the civil proceedings on the merits, the main proceedings in principle do not have to be in the same jurisdiction.

The claimant is liable for damages suffered by any person in connection with or as a result of an attachment order. In commercial disputes, the petitioner must provide security covering any potential costs in the amount of CZK50,000 (about US\$2,617).

**14. Are any other interim remedies commonly available and obtained? If yes, please give brief details.**

A general list of possible interim remedies which may be considered in commercial disputes is provided by the CPC (*see Question 12*). It sets out commonly used standard interim remedies and courts can order any other useful and lawful remedy depending on the circumstances and the claim.

**FINAL REMEDIES****15. What remedies are available at the full trial stage (for example, damages and injunctions)? Are damages just compensatory or can they also be punitive?**

Courts decide on the merit of cases by judgment and can:

- Grant the claim fully or partially.
- Wholly reject the claim.

The content of the judgment must reflect the action. Court can order defendants to:

- Perform, including reimbursing damages.
- Not perform or omit something.

The court also decides on the costs of proceedings (*see Question 21*).

The Czech legal system recognises only compensatory damages. The amount of damages corresponds with the real loss (damage) suffered. In certain matters where the loss cannot be determined precisely, the law prescribes a lump sum, but it is mostly in connection with immaterial losses (for example, health and so on).

**EVIDENCE****16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?**

Factual findings in civil proceedings (as opposed to criminal proceedings) depend on the evidence submitted by the parties. They have the burden to prove their claim or defence. The court does not take anything into account that was not proven by the parties.

The parties have no general duty to disclose information or documents or to help another party provide evidence. The disclosure of documents is very rare in a Czech civil procedure (see *Question 17*).

---

**17. Are any documents privileged (that is, they do not need to be shown to the other party)? In particular:**

- **Would documents written by an in-house lawyer (local or foreign) be privileged in any circumstances?**
  - **If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?**
- 

**Privileged documents**

Czech procedural law does not recognise any general privilege for documents that are submitted into proceedings as evidence and that remain undisclosed to the other party.

The parties have a right to see all evidence submitted by the other party. If a party wants to use certain documentary evidence in a proceeding, it must submit the document to the court, even if it contains business secrets. The evidence is then exercised, if found to be relevant by the court, during the hearing which all parties can attend. The parties can also view the court's file from which they have a right to obtain copies. However, a party is restricted from abusing the other party's business secret or secret information.

**Other non-disclosure situations**

Certain procedural specifics are required in relation to secret information under Act No. 412/2005, Coll. In these cases, the judge informs the parties to the proceedings about the confidentiality of these documents and instructs them to maintain confidentiality.

**Discovery**

The parties have no general obligation to reveal any information which they have in connection with the case to the other party. The court may require a party to provide a document in its possession but proposed as evidence by the other party only in limited situations. It is not usual in Czech court proceedings.

---

**18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?**

---

All means by which the true state of a case can be proven can be used as evidence, including the oral or written evidence of witnesses, expert opinions and documents and so on.

Therefore, it is possible to provide the court with a statement of a witness as evidence. However, the oral questioning of a witness is provided by the CPC and the courts usually call witnesses to attend oral hearings. If a witness fails to attend a hearing without an excuse, the court can enforce their presence.

Before their testimony, witnesses must be advised by the court about their obligation to tell the truth and the potential criminal consequences of their failure to do so. Both parties can ask the witness questions after the court's questioning and cross-examine a witness in relation to the other party's questions.

In addition, courts can also order evidence by examining the parties (their representatives) if the given fact cannot be proved otherwise. This is possible only with the respective party's consent. The board of a legal entity as well as its leading employees should be heard as participants. However, they have the same right to refuse to testify in proceedings.

---

**19. In relation to third party experts:**

- **How are they appointed (for example, are they appointed by the court or by the parties)?**
  - **Do they represent the interests of one party or provide independent advice to the court?**
  - **Is there a right to cross-examine (or reply to) expert evidence?**
  - **Who pays the experts' fees?**
- 

**Appointment procedure**

If a court's decision is dependent on professional knowledge, the court may appoint an expert and formulate questions for their opinion. Before the actual appointment, courts must provide the parties with an opportunity to:

- Comment on the need for the expert report.
- Provide the court with their questions for the expert.
- Make a statement as to their competence and impartiality.

Instead of an expert report, the court may use a certificate or a professional statement if the court has no doubt about its veracity.

Parties may support their claim or defence with an expert report. The expert reports can represent relevant evidence in proceedings. However, if a decision requires professional knowledge (see *above*), courts cannot base their decisions on an expert report provided by any of the parties and must, for the purposes, appoint its own expert. This rule reflects, among other things, the fact that the parties' expert opinions rely only on the facts provided to the expert by the parties. In contrast, the court's expert opinion should rely on all of the relevant facts of the case present in the court's file. The parties have an obligation to co-operate with the court-appointed expert, in particular, to respond to questions and to provide additional documents and explanations.

The court also appoints experts in cases when there are conflicting expert reports submitted into proceedings by both parties.

**Role of experts**

There is a list of experts held by civil courts. Requirements for their position and the quality of their reports are provided by Act No. 36/1967 Coll., on Experts and Translators.

Experts should be independent in the preparation of their opinion (that is, without any prejudice to the parties and to the subject matter of the dispute). This applies for both court-appointed experts and parties' expert reports. The main difference is that the parties may, in cases of their expert reports, indirectly influence the result of such reports with the selective provision of factual background and formulation of questions which support their claim or defence. In such cases, a report can be challenged by the other party.

**Right of reply**

If one party submits its own expert opinion, it is at the other party's discretion whether to respond with its own expert opinion or counter opinion, as the case may be. The choice will reflect the actual state of the proceedings and costs of the expert opinion. If the matter examined by the parties' expert reports requires professional knowledge to be assessed, the court should appoint a new expert. The court's expert may consult and regard the parties' reports due to their professional persuasiveness.

If a court's expert report is not persuasive, the court may require the expert to amend their opinion or order a revision expert report from an expert institute.

Expert testimony in connection with elaborated report depends on the decision of the court. The court usually asks the parties if they have any questions about the expert in respect of their expert opinion. If a party demands the presence of an expert at a hearing, the expert is usually heard.

**Fees**

The court's expert fees incurred during the procedure are paid by the court. These costs are then accounted to the parties depending on the result of the dispute.

The parties bear the costs connected with their own expert reports, including the expert's fees. Courts, in most cases, refuse to make the other party reimburse such costs, even in cases of full success.

**APPEALS****20. In relation to appeals of first instance judgments in large commercial disputes:**

- **To which courts can appeals be made?**
- **What are the grounds for appeal?**
- **Please briefly outline the typical procedure and timetable.**

Higher courts decide on appeals against the decisions made by the regional courts, which act in most commercial disputes as the courts of first instance. There are two Higher Courts in the Czech Republic, in Prague and Olomouc.

Typical grounds for an appeal are:

- The lack of jurisdiction of the court deciding in the first instance.
- Procedural errors.
- Defective factual findings.
- Improper exercising or assessment of evidence.
- Improper decision-making lacking correct reasoning.
- Errors in legal assessment.

An appeal must be filed within 15 days of the delivery of the decision of the court whose decision is contested. Late appeals are rejected.

An appeal must identify the:

- Contested decision.

- Contested extent (that is, the particular verdicts which are challenged).
- Remedy sought by the appellant.
- Reasons for such remedy.

New facts and evidence are generally admitted in appellate proceedings if they were not available to the parties before the first instance decision. The appellate court may re-examine evidence. However, in most cases, it decides on the grounds of the facts as identified by the court of first instance if it is not defective.

The appellate court must confirm a decision if it is correct on its merits and, in other cases, change or cancel a decision and return it to the court of first instance. The CPC does not state any time-limit for the court to decide, but generally the decision-making lasts one year or more.

An appellate court's decision may be subject to recourse by the Czech Supreme Court.

**COSTS****21. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs (for example, any pre-trial offers to settle)?**

Reimbursement of costs generally depends on the success on the merits. The following rules apply in this respect:

- If a party wins a case in full, the court usually rules that the unsuccessful party must reimburse the costs of the other party as well as the court's costs in full.
- If a party wins a case only partly, the court can proportionately divide the reimbursement of the costs or it may decide that none of the parties has the right to be reimbursed by the other party. However, the court's costs must be reimbursed proportionately.
- Even if a party wins a case only partially, the court may award full reimbursement of the cost to the party, if it was unsuccessful in a relatively negligible part or if the decision on the amount of fulfilment depended on an expert opinion or the court's consideration.
- An unsuccessful party may be entitled to reimbursement of the costs of a proceeding if the party did not give cause for the action by its behaviour.

The costs of proceedings include, in particular:

- Cash expenses of the parties and their representatives, including the court tax. The court tax is paid at the beginning of a court proceeding by the claimant:
  - in cases of monetary claims: 4% of the value of the dispute;
  - in other claims: in the amount stated by the enclosure of Act No. 549/1991 Sb.

The minimum court tax is CZK600 (about US\$31), the maximum is CZK1 million (about US\$53,342).

- The parties' lost earnings.
- Cost of evidence, including expert remuneration and interpreting costs.

- Remuneration for legal representation. The court calculates these costs in accordance with the flat rates provided by Decree no. 484/2000 Coll., and it is applied irrespective of the actual cost of the affected party. The flat rates in most cases in large commercial disputes cover only part of the costs of the parties for their legal representation.

---

## 22. Is interest awarded on costs? If yes, how is it calculated?

---

No interest is awarded on the costs of proceedings. Potential interest accrued on the principal of the disputed claim must be awarded together with the principal as one claim.

## ENFORCEMENT

---

### 23. What are the procedures to enforce a local judgment in the local courts?

---

Local judgments can be officially enforced either by the courts or by the executor offices.

Executors are private subjects who are officially authorised by the Execution Act (*Act No. 120/2001 Coll.*) to perform certain steps instead of courts to unburden the courts' agenda. Executors act independently and for consideration, which is usually paid by the liable party from the proceeds of the execution. Executors are interested in the quick and effective enforcement due to the consideration of the enforced amount. Enforcements of judgments by executors are considered to be generally more effective than executions managed solely by the court.

If a liable party fails to perform what it was ordered to do under an enforceable decision voluntarily, the entitled party may file an application for execution of the decision by the court or by an executor. Irrespective of the method of execution, the courts are exclusively empowered to order the execution, and if a petition is filed with an executor, it must ask the court for the decision. This application must be delivered to the court at the seat or residence of the obligated party.

This application must be accompanied at least with an original or certified copy of the decision imposing the enforced obligation together with a certificate of enforceability of the decision, or by other document to which the law attaches the same effect, for example, a notarial deed with a clause of direct enforceability.

Execution may be ordered and carried out only by the methods stipulated in the CPC or in the Execution Act. In cases of the execution of pecuniary sums, wage deduction, sale of movables, immovables or the whole enterprise comes into question.

## CROSS-BORDER LITIGATION

---

### 24. Do local courts respect the choice of law in a contract (that is, if the parties agree that the law of a foreign jurisdiction will govern the contract)? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

---

Procedures before Czech courts are always held according to the domestic procedural rules. The choice of substantive law is regulated by *lex fori* (that is, the laws of the jurisdiction in which

the action is brought). Therefore, if the litigation is held in a Czech court, the choice of law must be allowed by Czech law to apply.

If there is a relationship with an international element, the parties can choose another substantive law differing from Czech law and the Czech courts will then recognise the agreement if the agreement is not restricted.

Some exemptions are, for example, stated in Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I), which is fully applicable in Czech courts. Under Rome I, there are areas with only a limited choice of law, that is, agreements on transportation, consumer agreements, insurance agreements and individual labour contracts.

There are also certain areas of law which should remain unaffected by the choice of law (the mandatory provisions overriding the choice of laws). These rules are considered to be "crucial" and help to protect the public interest, political, social or economic organisation and main principles applicable in the Czech legal system. In cases of a choice of other law than the law determined by conflict of law rules, it is not allowed to contradict any mandatory provisions stated by constitutional, administrative, criminal or tax law.

---

### 25. Do local courts respect the choice of jurisdiction in a contract (that is, if the parties agree that claims will be brought in the courts of a foreign jurisdiction)? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

---

Czech courts respect the choice of jurisdiction in contracts under Act No. 97/1963 Coll., on International Private and Procedural Law. According to this Act, a Czech legal entity in property disputes can state, in writing, the jurisdiction of a foreign court if one of the parties is foreign.

However, Czech courts do not automatically accept the jurisdiction of foreign courts, even if agreed between the parties. It must first be verified if the Czech courts do not have an exclusive jurisdiction over the matter, which would restrict the possibility of the parties for such court prorogation. If this is verified, the agreement on prorogation made between the parties prevents the hearing of the case by the Czech courts. Considering the scope of commercial disputes, the exclusive jurisdiction of Czech authorities will be given in relation to disputes concerning real estate property situated in the Czech Republic.

---

### 26. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, please briefly outline the procedure to effect service in your jurisdiction. Is your jurisdiction party to any international agreements affecting this process?

---

There is no legal duty to obtain permission from foreign courts to start a court proceeding in the Czech Republic.

The only requirements reviewed by the Czech courts to start a proceeding are the competency, territorial jurisdiction and

subject-matter venue. For a Czech court, the relevant rules relating to the jurisdiction are, among others:

- The CPC.
- Act. No. 97/1963 Coll., on the International Civil and Procedural Law.
- Regulation (EC) No. 44/2001 on jurisdiction and the recognition and the enforcement of judgments in civil and commercial matters.

---

**27. Please briefly outline the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction. Is your jurisdiction party to an international convention on this issue?**

---

The CPC does not regulate the procedure for taking evidence from a witness in Czech jurisdiction for the purposes of proceedings in other jurisdiction. The CPC regulates only legal requests to bring evidence inside a Czech jurisdiction.

However, the Czech Republic is party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970, which has more than 40 members. This convention allows the competent authority of a contracting state to ask an authority of another contracting state to perform evidence or some other judicial act originating in another member state.

The Czech Republic is also party to a number of bilateral and multilateral treaties regulating to legal support between contracting parties. The list of these treaties is available at [www.justice.cz/cgi-bin/sqw1250.cgi/zresortu/smlouvy/sml\\_04.html](http://www.justice.cz/cgi-bin/sqw1250.cgi/zresortu/smlouvy/sml_04.html). Unfortunately, it is solely in the Czech language. No English version is publicly accessible.

---

**28. What are the procedures to enforce a foreign judgment in the local courts?**

---

Judgments rendered by a judicial authority of another state are enforceable in the Czech Republic if they were issued in civil matters by civil authorities. To enforce foreign judgments, all of the following conditions must be met:

- The judgment must be final and its legal status must be confirmed in an affidavit issued by the competent authority of the respective state.
- The judgement is enforceable in the state of its origin.
- The judgement has been recognised in the Czech Republic. Judgments concerning property matters are enforceable without the requirement of any special recognition. The recognition of such judgments is decided as a prejudicial question and after that the judgement is deemed to have the same effect as it would have been given by a Czech authority.

Therefore, generally, if the above conditions are met, local courts recognise judgments made in England and Wales courts.

Judgments cannot be enforced, even if the above prerequisites are met, if:

- The Czech authorities have exclusive competence in the case.

- A Czech authority has already issued a final decision in the same matter, or a final decision of an authority of a third state has already been recognised in the Czech Republic.
- The obliged party was deprived of a proper chance to participate in the procedure in which the judgment was rendered.
- The recognition would contravene the Czech public order.
- Reciprocity between the Czech Republic and the appropriate foreign state is not proved.

The Czech courts do not have any competence to review the judgments, their grounds and reasoning and, subject to fulfilment of the above conditions, the court must order the enforcement of the judgment to the extent to which it is petitioned by the entitled person if this demand is supported by the referred judgment.

For the purposes of a Czech enforcement procedure, any such judgment must be officially translated. In addition, certain other documentary evidence may be required (for example, an officially authenticated extract from the Commercial Register of a foreign legal subject, and so on).

Judgments in civil matters and property matters which have been certified as a European Enforcement Order in an EU member state must be recognised and enforced in other member states without the need for a declaration of enforceability and without any possibility of opposing its recognition.

## ALTERNATIVE DISPUTE RESOLUTION

---

**29. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Please briefly outline the procedures that are typically followed and any rules that apply.**

---

The legal regulation presumes a wide range of ADR methods. The main ADR methods used are:

- **Arbitration.** One of the most used types of ADR in the Czech Republic is arbitration, because it is cheaper, faster and conducted in private. If parties want to settle their dispute before arbitrators they must conclude an arbitration clause or agreement in writing that the property disputes between them (excluding disputes arising from the enforcement of decisions and incidental disputes), which would otherwise fall within the jurisdiction of the courts, must be decided by one or more arbitrators or by a permanent arbitral tribunal which may be established only in accordance with the law. Arbitral awards which become enforceable constitute executable title.
- **Financial arbiter.** Another special type of ADR is a financial arbiter. It is a special body appointed by the Chamber of Deputies that settles only particular kinds of disputes (that is, disputes between service providers of systems of payment and their clients or between issuers and users of electronic money systems), if the Czech court would otherwise be competent.
- **Mediation.** Mediation is a conciliatory way of solving complicated situations through a mediator. A mediator is a person with professional skills that is chosen by the parties to:
  - hear their problems;
  - work through the parties' emotions; and
  - be responsible for the communication between the parties.

In contrast to a judge, mediators do not issue any judgment, but only offer non-binding solutions to the parties. There is no law to govern mediation in commercial disputes. Fees and the number of meetings are subject to agreement between the parties and the mediator.

- **Settlement by the court.** Settlement is a frequently used type of ADR within court proceedings. If the nature of the case permits, the parties can end a proceeding by settlement. The court must always attempt to effect a settlement. The court must not approve a settlement if it is contrary to the statutory provisions. An approved settlement has the effects of a final judgment. However, the court is entitled to rescind an approved settlement if it is invalid under a provision of substantive law. The court's decision on a settlement between parties has the effect of a decision on merits and sets an obstacle for further proceedings on the same subject matter (*rei iudicata*).

---

### 30. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

---

ADR does not form part of the court procedures. The only exception is the court settlement (*see Question 29*). Exercising ADR procedures, including the court settlement, takes place only if the parties agree. The parties cannot be compelled by the court to use ADR procedures.

---

### 31. Is ADR confidential?

---

It is fundamental that ADR is confidential in relation to the ADR body. However, it is not fundamental in relation to the parties to the ADR procedure, unless they agree otherwise. The judges, arbitrators, financial arbiter and its employees cannot disclose facts they learn while carrying out their functions. Certain arbitral procedural rules that the parties address impose the obligation of confidentiality in relation to the parties, for example, Rules of the Arbitration Court.

The judges may be relieved from this duty by a special act or decision of an authorised person. The arbitrators may be relieved of this duty by the parties or by the chairman of a District Court, if the parties refuse to do so. Financial arbiters may be relieved of this duty by the Chamber of Deputies.

If the parties choose to proceed with a mediator and the mediator is not otherwise bound by a special confidentiality duty (for example, due to their membership in some bar association (for example, attorneys at law)), they should conclude a confidentiality agreement with the mediator in a separate agreement.

---

### 32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege?

---

The fundamental principle of giving evidence is that the parties must provide the evidence to prove their statements if appropriate with respect to the ADR method.

Evidence can be provided by any and all means based on which the facts can be determined (*see Question 18*), in particular:

- Testimony of witnesses.
- Expert opinions.
- Reports and statements of bodies, natural persons and legal entities.
- Notarial and executory deeds and other documents.
- Examinations and testimony of the parties.

In relation to the above ADR methods (*see Question 29*), evidence must be examined, particularly in arbitration proceedings. Arbitrators are entitled to examine the evidence in arbitration proceedings if provided to them voluntarily. They are entitled to hear the testimony of witnesses, experts and the parties if they willingly appear before them, and they may examine other evidence within the proceedings. Arbitrators have no general competence similar to the courts to compel the witnesses or experts to attend hearings or testimony. Nor do they have a right to request evidence which is not entrusted even to the civil courts.

The information and documents provided during or for the purposes of ADR are protected from disclosure to third persons by the ADR bodies due to the confidentiality of such proceedings (*see Question 31*). However, without an agreement between the parties, the parties are not generally bound by any confidentiality duty if the information or document does not contain secret information within the meaning of Act No. 412/2005 Coll., on Protection of Secret Information.

The parties are restricted from abusing information that they acquired during arbitral proceedings from the other party, in particular, information containing trade secrets or which might be considered as unfair competition.

---

### 33. How are costs dealt with in ADR?

---

Reimbursement of costs depends on the type of procedure and type of decision-making body.

In relation to arbitration, the Arbitration Act does not specifically address the costs of arbitration proceedings. The only matter that it refers to in connection with costs is that the permanent arbitral courts are allowed to set rules for the reimbursement of the costs of arbitral proceedings. The rules for cost reimbursements in the CPC apply accordingly (*see Question 21*) if the arbitral proceedings do not take place with a permanent arbitral court and the parties do not make any agreement in this respect. The Rules of Arbitration Court divide the costs of arbitral proceedings into:

- The fees of arbitral proceedings.
- Specific costs incurred by the Arbitration Court.
- The costs incurred by the parties.

An unsuccessful party may be compelled to pay the successful party the costs it incurred during the proceeding.

If a settlement takes place, the parties usually also agree on the reimbursement of costs. Usually, each of the parties bears its own costs.

**34. Is ADR used more in certain industries? If yes, please give examples.**

It is unclear whether ADR is used more often in certain industries.

**35. Please give brief details of the main bodies that offer ADR services in your jurisdiction.****Arbitration**

The main body that offers arbitration services is the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (see [www.soud.cz](http://www.soud.cz)).

**Financial arbiter**

The current Czech financial arbiter is František Klufa (see [www.finarbitr.cz](http://www.finarbitr.cz)).

**REFORM****36. Please summarise any proposals for dispute resolution reform and state whether they are likely to come into force and, if so, when.**

The CPC was recently considerably amended so no new fundamental amendments are expected in the near future. The main challenge, not only for the parties and their legal representatives but also for the courts, seems to be the

concentration of factual statements and supporting evidence which must be brought by the parties before or during the first court hearing (see *Question 9*). This model of concentration is often criticised by judges and others. Therefore, it is a question of how strictly the concentration will be interpreted by the courts.

Recently, there has been some political pressure to limit arbitration of disputes relating to consumer contracts and arbitration generally. A bill to amend the Arbitration Act is being discussed in the Chamber of Deputies of the Czech Parliament. This bill stipulates that disputes raised from consumer loans will no longer be arbitrable.

The High Court in Prague has recently stated that arbitration agreements (clauses) by which an ad hoc arbiter is not appointed directly, but is appointed by an appointing authority with reference to a list of arbitrators of non-permanent arbitration courts, are invalid. This conclusion is controversial in light of arbitration practice not only in the Czech Republic, but also in respect of the recommendations of the International Chamber of Commerce or UNCITRAL Model Law on International Commercial Arbitration.

**CONTRIBUTOR DETAILS**

**Vladimir Uhde, Robert Klenka and Miloslav Strnad**  
*BBH, advokatni kancelar, v.o.s.*

**T** +420 234 091 355

**F** +420 234 091 366

**E** [vuhde@bbh.cz](mailto:vuhde@bbh.cz)

[rklenka@bbh.cz](mailto:rklenka@bbh.cz)

[mstrnad@bbh.cz](mailto:mstrnad@bbh.cz)

**W** [www.bbh.eu](http://www.bbh.eu)

**PLC Law Department**

**PRACTICAL LAW COMPANY**



“PLC is a breath of fresh air.  
The way the material is presented  
makes you want to read it.”

**Tim Lane**, Legal Counsel, Rio Tinto PLC.

**PLC Law Department** is the essential know-how service for in-house lawyers. Never miss an important development and confidently advise your business on law and its practical implications. [www.practicalaw.com/about/lawdepartment](http://www.practicalaw.com/about/lawdepartment)

# Our Clients' Success Speaks For Itself



BBH, advokátní kancelář, v.o.s. (formerly named Brzobohatý Brož & Honsa, v.o.s.) is a full-service independent Czech law firm based in Prague with an international cross-border focus. Established in January 2000, BBH subsequently acquired the Prague office of an international law firm previously operating in the CEE region, thereby greatly expanding BBH's presence throughout Central and Eastern Europe.

In June 2006 BBH opened an office in Moscow under the name BBH Legal LLC (the first branch office of a Czech law firm in Russia), and on 1 January 2007, BBH opened a new office in Bratislava now officially named BBH advokátska kancelária, s.r.o. (formerly named BBH Slovensko, s.r.o.)

The opening of the Moscow office was the logical conclusion of BBH's numerous instructions and engagements by Russian clients, and significant Czech and international concerns conducting business in Russia in the years preceding 2006. The establishment of the Slovak branch office, on the other hand, resulted from the deepening of a ten year partnership with local lawyers. Both offices have been profitable from their opening and have been involved in numerous high profile transactions and instructions. The Prague office of BBH is cur-

rently the largest office of the firm and it is also the office with the longest history, with a professional team dating back to 1990. BBH Prague is consistently rated among the leading law firms operating on the Czech market.

BBH has 65 highly skilled lawyers (including 8 partners) and a number of specialised support staff so that in total BBH is comprised of nearly 100 employees working in the Czech Republic, Russia and Slovakia.

Over the past few years, BBH has participated in a number of high profile and top-rated transactions, involving both Czech and foreign jurisdictions:

- Largest Ever Czech M & A Deal which involved 17 jurisdictions ("Emerging Markets Deal of the Year", according to Thomson – Acquisitions Monthly)
- 2009 CEE Real Estate Deal of the Year
- First Rated Securitization in CEE
- Largest Foreign Investment in the Republic of Serbia
- Largest Bond Issue Placed on the PSE in 2007
- Largest Share Buy Back Transaction in Czech history
- Largest Energy Industry Arbitration in CEE

banking & finance

insurance

financial and  
capital markets

M & A

international  
arbitration  
and litigation

financial  
restructuring

IP/IT

real estate  
and construction

EU law

aircraft

competition

energy

corporate  
& commercial

media &  
telecommunications

**Prague / Moscow / Bratislava**

[www.bbh.eu](http://www.bbh.eu)

