

## Czech Republic

Czech Republic

Act of 25 January 2012 on Private International Law<sup>1</sup>

**Act no 91/2012 Collection of Laws of the Czech Republic The  
Parliament has passed this Act of the Czech Republic:**

### ***Part One General Provisions***

#### *§ 1 Subject Matter*

This Act stipulates, in relations with a cross-border element,

- a) the law of which state shall govern private-law relations including the application of other laws than the designated applicable law,
- b) legal status of foreigners and foreign legal entities in private-law relations,
- c) jurisdiction and procedures of courts and other authorities when dealing with relations referred to under a) and b), and taking decisions concerning such relations including steps taken in the proceedings provided the crossborder element is present only in the proceedings themselves,
- d) recognition and enforcement of foreign judgments,
- e) judicial cooperation in communication with foreign states,
- f) certain matters related to insolvency,
- g) certain matters related to arbitration, including recognition and enforcement of foreign arbitral awards.

#### *§ 2 International Agreements and European Union Law*

This Act shall be applied within the limits of the provisions of promulgated international treaties by which the Czech Republic is bound (hereinafter referred to as ‘international treaty’) and directly applicable provisions of the European Union law.<sup>1</sup>

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<sup>1</sup> Unofficial translation by Bříza & Trubač – Attorneys at Law – <[www.brizatrubac.cz](http://www.brizatrubac.cz)>, Prague (Czech Republic).

## *§ 3 Overriding Mandatory Provisions*

Provisions of this Act shall not prevent the application of such provisions of the Czech legal order which are, within the limits of their subject matter, always applicable regardless of which law governs the legal relations that are affected by the application of such provisions.

## *§ 4 Public Policy Exception*

Provisions of a foreign law which is to be applied pursuant to the provisions of this Act shall not be applied if the effects of such application are manifestly incompatible with the public policy (ordre public) [of the forum]. For the same reasons it shall not be possible to recognize foreign judgments, foreign court settlements, foreign notarial acts and other public documents (authentic instruments), foreign arbitral awards, to undertake a procedural act based on a request from abroad [from foreign authorities], or to recognize a legal relation or an event which originated abroad or under a foreign law.

## *§ 5 Circumvention (Abuse) of Law*

Facts (events) created or pretended by a deliberate act with an intention to eliminate the application of such provisions of this Act which cannot be derogated from by an agreement, or to apply them differently than if such created or pretended facts (events) did not exist, shall be disregarded.

## ***Part Two General Provisions of Procedural International Law***

### **Title I Jurisdiction**

## *§ 6 Jurisdiction of Czech Courts*

- (1) The Czech courts shall have jurisdiction in proceedings when the (Czech) procedural provisions stipulate a local jurisdiction (venue) of a court in the territory of the Czech Republic, without prejudice to the application of other provisions of this Act or other legislation.
- (2) When the Czech courts have jurisdiction, their jurisdiction shall apply also on a counter-claim arising from the same legal relation or the same factual circumstances.

## *§ 7 Immunity from Jurisdiction of Czech Courts*

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- (1) Other States shall have immunity from the jurisdiction of the Czech courts as regards proceedings arising out of the state's acts and actions undertaken while exercising their state, governmental or other public powers and functions, including their property used or intended for such acts.
- (2) Immunity from the jurisdiction of the Czech courts shall not apply to other acts, actions or cases, to the extent in which general international law or international agreements allow institute proceedings against a state before the courts of another state.
- (3) Persons, international organizations and institutions enjoying immunity in the Czech Republic under general international law or the Czech law are, to an extent stipulated therein, not subject to jurisdiction of the Czech courts.
- (4) The provisions of paragraphs 1 and 3 shall apply also to service of documents, summoning of witnesses, enforcement of judgments and to other procedural steps.
- (5) Service to other states, international organizations, institutions and persons enjoying immunity other than the immunity from the jurisdiction of Czech courts shall be arranged by the Ministry of Foreign Affairs. Where such service is not possible, a court shall designate a guardian.
- (6) The provisions of paragraphs 1 to 5 shall apply also to acts of other Czech public authorities when deciding on matters governed by this Act, as appropriate.

## Title II Provisions on Proceedings

### *§ 8 Basic Provisions*

- (1) The Czech courts shall act in proceedings under the Czech procedural provisions, while the parties shall enjoy an equal status when exercising their rights.
- (2) Proceedings initiated in another state shall not prevent from initiating proceedings on the same cause of action between the same parties before a Czech court. If the initiation of proceedings before the Czech court occurred later than the one in another state, the Czech court may, in justified cases, stay the proceedings should it be assumed that a foreign body's decision is to be recognized in the Czech Republic.

### *§ 9 Status of Foreigners and Foreign Entities in Proceedings*

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- (1) Capacity of a foreigner to be a party to proceedings as well as the procedural capacity shall both be governed by the law of the state of the foreigner's habitual residence; it shall however be sufficient for the foreigner to possess such a capacity under the Czech law.
- (2) Capacity of foreign entities other than natural persons to be a party to proceedings as well as their procedural capacity shall both be governed by the law under which the entity has been established; it shall however be sufficient for the entity to possess such a capacity under the Czech law.

## § 10

Foreigners and foreign legal entities shall be, under the same conditions as the citizens of the Czech Republic and the Czech legal entities, entitled to an exemption from court fees and deposits and to an appointment of a free-of-charge representative to protect their interests, provided reciprocity is guaranteed. The guarantee of reciprocity condition shall not apply to the citizens of the European Union Member States and other countries of the European Economic Area.

## § 11

- (1) The court may, upon a defendant's proposal, order a foreigner with habitual residence abroad and a foreign legal entity seeking a decision on a property right, to provide a security deposit set by a court to cover the costs of proceedings. Should the security deposit not be provided within the set time limit, the court shall not continue in the proceedings against the defendant's will and shall dismiss the proceedings. The plaintiff needs to be informed thereof.
- (2) The security deposit shall not be ordered if
  - a) the proposal to provide the security deposit was submitted after the defendant has already acted in the case or has undertaken a procedural step, while knowing that the plaintiff is not a citizen of the Czech Republic or a Czech legal entity, or that the plaintiff has lost the Czech citizenship or ceased to be a Czech legal entity, or the plaintiff is not habitually resident in the Czech Republic,
  - b) in similar cases, in the state of the plaintiff's domicile a provision of a security deposit is not required from the citizens of the Czech Republic or the Czech legal entities,
  - c) the plaintiff owns an immovable property in the Czech Republic in a price sufficient to cover the costs incurred by the defendant in the proceedings,

- d) the proposal to initiate the proceedings is processed by means of a payment order, or
  - e) the plaintiff is exempt from court fees and deposits.
- (3) The obligation to provide a security deposit shall not be ordered to the citizens of the European Union Member States and other countries of the European Economic Area.

## *Foreign Public Documents*

### *§ 12*

- (1) A document executed by a court, a notary or an authority in a foreign state, which is in the place of its origin deemed to be a public document, or a public document executed by a diplomatic officer or consular agent working in the Czech Republic, shall be taken as a public document evidence also in the Czech Republic, provided it possesses the required legalisation.
- (2) Should the document executed abroad fail to possess the required legalisation in accordance with international practice and should the relevant embassy of the Czech Republic have no doubts about its authenticity, the embassy shall place a certificate on the document declaring that the embassy has no doubts about the authenticity of the document.

## *Reciprocity Detection*

### *§ 13*

Upon request, the Ministry of Justice shall provide the court with information about reciprocity with another state.

## **Title III Recognition and Enforcement of Foreign Judgments**

### *§ 14*

Judgments of foreign courts and judgments of foreign authorities on rights and obligations which would be, based upon their private-law nature, decided by courts in the Czech Republic, as well as foreign court settlements and foreign notarial acts or other public documents on these matters (hereinafter referred to as ‘foreign judgments’), shall be effective in the Czech Republic provided a certificate of the foreign authority confirms the

judgment has become final and provided it has been recognized by the Czech public authorities.

## § 15

- (1) Unless other provisions of this Act stipulate otherwise, a final foreign judgment shall not be recognized if
- a) the matter falls into an exclusive jurisdiction of the Czech courts or if the proceedings could not be implemented by any authority of a foreign state, should the provisions on jurisdiction of the Czech courts apply to assess the jurisdiction of a foreign authority, unless the party to the proceedings against which the foreign judgment is focused voluntarily submits to the jurisdiction of a foreign authority,
  - b) proceedings involving the same legal relation are brought in the courts of the Czech Republic and the Czech court was seised prior to the foreign court which rendered a judgment the recognition of which is being applied for,
  - c) a Czech court has rendered a final judgment on the same legal relation or if a foreign final judgment rendered by a third state's authority has already been recognized in the Czech Republic,
  - d) the party against which the judgment is to be recognized has been disabled by a foreign authority's action to properly participate in the proceedings, in particular the party has not been served with the summons to appear or with the document which instituted the proceedings,
  - e) the recognition would be manifestly contrary to the public policy, or
  - f) reciprocity is not guaranteed; reciprocity shall not be required provided the foreign judgment is not aimed against a national of the Czech Republic or a Czech legal entity.
- (2) The defence referred to under paragraph 1 letter d) shall be taken into consideration only if it is raised by the party against which the foreign judgment is to be recognized. This shall also apply to the defences referred to under paragraph 1 letters b) and c), unless the authority deciding upon recognition is otherwise aware of their existence.

## § 16

- (1) Recognition of a foreign judgment in property matters shall not be rendered in a separate judgment (verdict). A foreign judgment shall be recognized by the fact that a Czech public authority takes it into consideration as if it was a judgment of a

Czech public authority. Should there be an objection of the public policy consideration or of another reason for rejecting recognition which could not be taken into account automatically, the proceedings shall be stayed and a time limit shall be set to initiate special proceedings pursuant to paragraph 4. After its final conclusion or after the expiry of the above-mentioned time limit the stayed proceedings shall continue.

- (2) Foreign judgments in other matters shall be recognized in special proceedings pursuant to paragraph 4 should this Act not stipulate that foreign judgments shall be recognized without further proceedings.
- (3) A foreign judgement may be recognized on application in the special proceedings pursuant to paragraph 4 even if the decision is recognized without further proceedings.
- (4) In special recognition proceedings, the court shall decide on the recognition by judgment; it need not order a hearing. The district court which is the general court of the person who seeks recognition shall have local jurisdiction to pronounce the recognition, otherwise the district court in whose district the fact in respect of which the recognition is relevant has occurred or may occur, unless the provisions of this Act or another legal regulation indicate otherwise.
- (5) On the basis of a foreign judgment on property matters which fulfils the conditions for recognition under this Act, an enforcement of such a judgment may be ordered by a reasoned decision of a Czech court.

## **Title IV Special Provisions on Recognition and Enforcement of Certain Foreign Judgments**

### *§ 17*

The provisions of this Title shall apply onto proceedings on recognition and enforcement of foreign judgments which are governed by the directly applicable provisions of the European Union law or international treaties that require a declaration of enforceability.

### *§ 18*

If a party requests, under a directly applicable provision of the European Union law or international treaties, to have recognition decided upon in special proceedings, the court

shall decide by means of a judgment on recognition. A hearing does not need to be ordered.

## § 19

- (1) Along with the application for a declaration of enforceability an application for a writ of execution may be submitted under a different law. In such a case, a court shall decide in a single judgment on both applications by separate reasoned statements (verdicts). The judgment must be reasoned even when deciding only upon one of these applications.
- (2) Provided a court proceeded according to the paragraph 1 and a directly applicable provision of the European Union law or an international treaty stipulates a time limit for lodging an appeal against the judgment on recognition or on declaration of enforceability of foreign judgments longer than a time limit set by another provision for lodging an appeal against a writ of execution, the longer time limit shall apply also to lodging an appeal against the writ of execution.
- (3) If an appellate court examines the reasons for which the foreign judgment may not be recognized and under the directly applicable provisions of the European Union law or an international treaty the reasons could not be examined by the first instance court, while the reasons are indicative of a non-recognition of the foreign judgment, the appellate court shall alter the judgment of the first instance court by dismissing the application.
- (4) A writ of execution of a judgment shall not become final prior to the declaration of the judgment's enforceability.

## ***Part Three General Provisions of Private International Law***

### *§ 20 Qualification (Characterisation)*

- (1) A legal assessment of a particular legal relation or question in order to find the applicable conflict-of-law provision to determine the applicable law is usually undertaken under the Czech legal order.
- (2) If legal provisions from more than one legal order are to apply to a particular legal relation or question, the assessment of such provisions in accordance with the paragraph 1 may also include the consideration of these provisions' functions within the framework of their legal system.



- (3) If the applicable law has been determined for the main relation, the assessment of a particular relation or question connected to the main relation is usually also undertaken under that law.
- (4) The facts stipulated in the conflict-of-law provisions of this Act to determine the applicable law (connecting factors) shall be assessed under the Czech law.

## *§ 21 Renvoi*

- (1) Where the provisions of this Act stipulate the application of foreign law the provisions of which refer back to the Czech law, the substantive-law provisions of the Czech law shall apply. Where the provisions of foreign law refer to the law of another foreign state, the substantive-law provisions of that law shall apply, should it be applied under its conflict-of-law provisions; otherwise the substantive-law provisions of the Czech law shall apply.
- (2) Renvoi shall not be resorted to in the contractual obligations and labour-law relations. Where the applicable law has been determined by the parties, it is possible to resort to its conflict-of-law provisions only if it follows from the agreement between the parties.

## *§ 22 Preliminary Questions*

- (1) The provisions of this Act shall apply to determine the law applicable to the preliminary question. Should the Czech courts not have jurisdiction to decide upon the preliminary question if it was considered in a separate case, the conflict-of-law provision of the law governing the main question shall apply to determine the applicable law provided such a question is governed by a foreign law.
- (2) If a preliminary question has already been granted a final judgment by a competent Czech public authority or a court or by an authority of a foreign state the judgment of which fulfills conditions for recognition in the Czech Republic, such a judgment shall pave the way (shall be binding) for the court.

## *§ 23 Determination and Application of Foreign Law*

- (1) Unless other provisions of this Act stipulate otherwise, the foreign law which is to be applied under the provisions of this Act shall be applied also of own motion (ex officio) and in a manner in which it is applied in the territory to which it applies. Such provisions thereof shall be applied which would be applied in the territory to which the law applies to the matter in question (case at hand), regardless of their systematic classification or their public nature, provided they are not contrary to the overriding mandatory provisions of the Czech law.

- (2) Unless further stipulated otherwise, the content of the foreign law which is to be applied under the provisions of this Act shall be determined of own motion (ex officio). The court or public authority deciding upon matters covered by this Act shall undertake all necessary measures for such a determination.
- (3) Should the content of the foreign law be unknown to the court or public authority deciding upon matters covered by this Act, it may request for its determination an opinion from the Ministry of Justice.
- (4) Should a legal order of a state with more than one legal system or with different provisions for individual groups of persons apply, the law of such state shall determine the application of relevant legal provisions.
- (5) If the foreign law is not determined within a reasonable time or if such a determination is impossible, the Czech law shall apply.

## *§ 24 Exceptional and Subsidiary Determination of Applicable Law*

- (1) It shall be possible, in completely exceptional cases, to decline from the application of the law which should be applied under the provisions of this Act, provided it seems inappropriate and contrary to a reasonable and fair arrangement of the participants' relation, following a due and reasoned assessment of a set of all the circumstances of the case, in particular the reasonable expectations of the participants regarding the application of another legal order. Under these conditions and provided the rights of third persons are not prejudiced, the law the application of which corresponds to such an arrangement shall be applied.
- (2) Should it not be possible to determine, under other provisions of this Act, the law applicable to a certain relation or question falling into the scope of this Act, the law which is in the closest connection to them shall be applied, unless the parties have chosen or have otherwise identified the application of a certain law.

## *§ 25 Overriding Mandatory Provisions of Another (Third State) Foreign Law*

Upon a request of a participant, provisions may be applied of another state's law which should not be applied under the provisions of this Act, however under the law they form a part of they shall be applied irrespective of which law governs the rights and obligations concerned. The condition for their application shall be that the rights and obligations concerned shall have a sufficiently significant relation (connection) to the other state and it shall be fair with respect to the nature of these provisions, their purpose or the consequences (implications) which would, in particular for the participants, result from

their application or non-application. The participant invoking such provisions shall prove the validity and content of these provisions.

## *Legal Status of Foreigners and Foreign Legal Entities in Private-Law Relations*

### **§ 26**

- (1) Foreigner means a natural person who is not a citizen of the Czech Republic. Foreign legal entity means a legal entity with a seat outside the territory of the Czech Republic.
- (2) Unless otherwise stipulated by this Act or other law, foreigners and foreign legal entities shall have the same rights and obligations in the area of personal and property rights as the citizens of the Czech Republic and the Czech legal entities.
- (3) In case another state treats the citizens of the Czech Republic and the Czech legal entities differently from its own citizens and legal entities, the Ministry of Foreign Affairs may, based upon an agreement with the competent authorities, stipulate in an official publication to decline from the application of the paragraph 2. This shall not apply to matters concerning foreigners and foreign legal entities to whom the law of the European Union shall confer the same rights and obligations as to the citizens of the Czech Republic and the Czech legal entities, or to matters when it would violate the fundamental human rights of the foreigner.

### **§ 27**

The status of foreigners and foreign legal entities doing business in the Czech Republic in the area of labour law, copyright law and industrial rights is governed by other laws.

### **§ 28 Multiple or Indeterminate Nationality**

- (1) If someone is in the decisive time period a citizen of the Czech Republic and if such a person is at the same time considered by another state to be its citizen, the nationality of the Czech Republic shall be decisive.
- (2) If someone is in the decisive time period a citizen of several foreign states, the last acquired nationality shall be decisive provided, considering the person's life situation, the relation of such a person to another state of which he or she is a citizen shall not substantially prevail; in such a case the nationality of that [latter] state shall be decisive.
- (3) A person who in the decisive time period is not a citizen of any state or whose nationality cannot be determined under with the paragraph 2 shall be regarded as a citizen of the state in the territory of which he or she has habitual residence in the

decisive time period, and if it cannot be determined, in the territory of which he or she resides. If even that cannot be determined, for the purposes of this Act it shall be proceeded as if he or she was a citizen of the Czech Republic.

- (4) If someone is an applicant for granting international protection, an asylum seeker or a beneficiary of subsidiary protection or is homeless under another law or international agreement, the personal status of such a person shall be governed by provisions of international agreements stipulating the legal status of refugees and the legal status of stateless persons.

## ***Part Four Provisions Concerning Individual Types of Private-Law Relations***

### **Title I Legal Capacity**

#### *§ 29 Natural Persons*

- (1) Unless otherwise stipulated by this Act, legal personality and legal capacity shall be governed by the law of the state in which a person is habitually resident.
- (2) Unless otherwise stipulated by this Act, it shall be sufficient when a natural person undertaking a legal act has legal capacity under the law applicable at the place where the legal act is undertaken.
- (3) A modification of the name of a natural person shall be governed by the law of the state of which the person is a citizen. However, such a person may invoke an application of the law of the state in the territory of which he or she has habitual residence.

#### *§ 30 Legal Entities*

- (1) Legal personality and legal capacity of an entity other than a natural person shall be governed by the law of the state under which it was established (incorporated). This law shall also govern a trading name or a name and internal relations of such an entity, the relations between such an entity and its partners or members, mutual relations of its partners or members, a responsibility of its partners or members for liabilities of such an entity, a person responsible for acting on behalf of such an entity, as well as its winding up.

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- (2) For such an entity to be bound by its usual acts it shall be sufficient when such an entity has such capacity under the law applicable at the place where the legal act was undertaken.
- (3) A legal entity domiciled in the Czech Republic may be established only under the Czech law. This shall not affect the possibility to transfer a seat of a legal entity domiciled abroad and incorporated under the law of a foreign state to the Czech Republic, provided it is allowed by an international treaty, a directly applicable provision of the European Union law or other legislation.

## *Bill of Exchange and Cheque Capacity*

### § 31

- (1) The capacity of a person to obligations (to be legally bound) under bills of exchange or cheques shall be governed by the law of the state of which he or she is a citizen. Should that law claim another state's law is applicable, the law of the other state shall apply.
- (2) A person without a capacity to obligations under bills of exchange or cheques under the law referred to in the paragraph 1 shall nevertheless be validly bound should he or she sign the bill of exchange or cheque in the state under the law of which he or she would have the capacity to obligations under bills of exchange or cheques. This shall not apply should a citizen of the Czech Republic or a person habitually resident in the Czech Republic be concerned.

### § 32

A specification of who can be indicated as a drawee shall be governed by the law of the state in which the cheque is payable. Should the cheque be, under such a law, invalid due to the person of the drawee, obligations under signatures written on the cheque in the state the law of which does not stipulate invalidity for such a reason shall nevertheless be valid.

## *Legal Capacity Limitation and Guardian Matters*

### § 33

- (1) The Czech courts shall have jurisdiction in matters concerning legal capacity limitations as well as in guardian matters, should they concern persons with habitual residence in the Czech Republic or citizens of the Czech Republic even if they are habitually resident abroad. The Czech court shall not be obliged to initiate proceedings, provided measures taken abroad are sufficient to protect the rights and interests of a citizen of the Czech Republic.

- (2) Should the Czech courts not have jurisdiction under the paragraph 1, the Czech court shall limit itself to measures necessary for the protection of a person and his or her property and shall inform thereof the authority of the state in which the person habitually resides. Should the competent authority of a foreign state not regulate the situation of such a person within a reasonable time, the Czech court shall do so.
- (3) The Czech court shall not inform the authorities of a foreign state under the paragraph 2 in matters concerning applicants for granting international protection, asylum seekers and beneficiaries of a subsidiary protection under other laws. In such a case, the Czech court shall be the one to regulate the situation of the person.

## § 34

The conditions for an establishment and termination of guardianship and conditions for limitation of legal capacity as well as for incapacitation shall be governed by the law of the state in which the ward has habitual residence. On principle, guardianship concerns the ward and his or her property, be the property where ever, provided the state where the property is located acknowledges effectiveness (recognizes effect) of the guardianship.

## § 35

An obligation to accept and exercise guardianship shall be governed by the law of the state in which the guardian is habitually resident.

## § 36

Legal relations between the guardian and the ward shall be governed by the law of the state in which the guardianship court or authority has its seat.

## § 37

Unless the provisions of § 34–36 stipulate otherwise, the Czech court shall take measures under the Czech substantive law.

## § 38

Final foreign judgments in the matters of a legal capacity limitation or incapacitation and in guardianship matters of a foreigner which were issued by the courts or authorities of the state of which the foreigner is a citizen (hereinafter referred to as ‘home state’) or the state in which the foreigner has habitual residence shall be recognized without further proceedings.

*Declaration as Dead or Missing*

## § 39

- (1) To declare a citizen of the Czech Republic dead or missing shall fall into an exclusive jurisdiction of a Czech court.
- (2) A Czech court may declare a foreigner dead or missing with legal consequences for the citizens of the Czech Republic as well as for persons habitually resident in the Czech Republic and for property located in the Czech Republic.
- (3) In the matters of declarations as dead or missing the Czech court shall always apply the Czech substantive law.

## § 40

Final foreign judgments in the matters of declarations dead or missing which were issued by the courts or authorities of the home state of the foreigner or the state in which the foreigner had last habitual residence shall be recognized without further proceedings.

## Title II Legal Acts

## § 41

The existence and validity of a legal act as well as the consequences of its nullity shall be governed by the same law as the legal relation established thereby, unless a law stipulates otherwise or unless the nature of the matter directs otherwise. In determining the [applicable] law, it shall be proceeded as if the legal act was valid.

## § 42

- (1) A contract or other legal act shall be valid as to its form provided the form complies with the law of the state
  - a) governing the contract or other legal act and a legal relation established thereby,
  - b) in which one of the actors expressed (manifested) its will (intent),
  - c) in which one of the actors has habitual residence or seat, or
  - d) in which an immovable property concerned by the legal act is located.

- (2) Should the law which governs or should govern a legal relation established by a legal act, or the law of the state in which an immovable property concerned by the legal act is located, stipulate maintaining of a certain form as a necessary prerequisite of validity, it shall be compulsory to maintain such a form.

## *§ 43 Form of Bill of Exchange and Cheque Declaration and Protest*

- (1) A form of a bill of exchange declaration and a form of a cheque declaration shall be governed by the law of the state in which the declaration was made. For the form of a cheque declaration it shall be sufficient to maintain the form stipulated therefor by the law of the payment place.
- (2) A defective form of the first bill of exchange declaration or the first cheque declaration shall have no influence on the validity of a later bill of exchange declaration or a later cheque declaration, should the bill of exchange declaration or the cheque declaration, invalid under the paragraph 1, conform to the law of the state where the later bill of exchange declaration or the later cheque declaration was made.
- (3) A bill of exchange declaration and a cheque declaration by a citizen of the Czech Republic made abroad shall be valid in the Czech Republic towards other citizens of the Czech Republic, provided it fulfils the requirements of the Czech law concerning its form.
- (4) A form of a protest and of a protest time limit as well as a form of other acts necessary for an application and maintenance of bills of exchange rights and cheque rights shall be governed by the law of the state in which the protest or other act must be undertaken (performed).

## **Title III Agency**

### *§ 44*

- (1) For an agency by operation of law or an agency by virtue of a decision of a court or other authority as well as for the effects thereof either the law which includes provisions governing agency by operation of law shall apply, or the law of the state the court or authority of which has given the judgment upon which the agency is based. For the effects of agency in usual acts, a compliance with the law applicable in place where the act was undertaken (performed) shall be sufficient.



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- (2) A legal act undertaken by an agent shall have effects for the principal if it complies with the law applicable in place where
  - a) the agent undertook the act,
  - b) the principal has a seat or habitual residence,
  - c) the agent has a seat or habitual residence, or
  - d) an immovable property is located if the legal act concerns such an immovable property.
- (3) A legal act undertaken by an agent shall also have effects for the principal provided it complies with the law which governs or should govern the legal relation established by a legal act of the agent.
- (4) To maintain the form of a power of attorney (document of authority) it shall be sufficient for the form to comply with one of the laws referred to under the paragraph 2 or 3 or with the law applicable in place where the power of attorney was granted.
- (5) A legal relation between the agent and a third party established as a result of exceeding the authority, as well as a legal relation between a person acting on behalf of another person without a due authority and a third party, shall be governed by the law applicable in place where the agent or the person acting on behalf of another person without a due authority has a seat or habitual residence. A third party may however invoke the application of the law applicable in place where the act of the agent or person acting on behalf of another person without a due authority was undertaken (performed).

## *§ 45 Proxy and Authority for Activities in Running of Business Plant (Establishment)*

The effects of acts on the basis of a proxy [die Prokura in German] for the principal shall be governed by the law of the state in which a person granting the proxy has a seat or habitual residence; the effects of acts on the basis of an authority for activities in running of a business plant (establishment) for the principal shall be governed by the law of the state in which the principal has a business plant, a branch or an establishment the running of which includes activities of the authorized person. It shall however be sufficient should these effects occur under the law applicable in place where the proxy holder [der Prokurist in German] or the authorized person undertook a legal act toward a third person and, when the legal act concerns an immovable property, also under the law applicable in place where the immovable property is located.

## Title IV Prescription (Limitation)

*§ 46 Prescription (limitation) shall be governed by the same law as the law which is subject to prescription.*

## Title V Family Law

### Section 1 Marital Regimes

#### *§ 47 Jurisdiction*

- (1) Unless an international treaty or a directly applicable provision of the European Union law stipulates otherwise, it shall be sufficient to establish the jurisdiction of the Czech courts for proceedings on divorce, on marriage annulment and on declaring whether a marriage exists or not, if one of the spouses is a citizen of the Czech Republic or if the defendant has habitual residence in the Czech Republic.
- (2) If the spouses are foreigners and the defendant is not habitually resident in the Czech Republic or in another Member State of the European Union, nor is a citizen of a Member State of the European Union and is not domiciled in the United Kingdom of Great Britain and Northern Ireland or in Ireland, the Czech courts shall have jurisdiction in matters referred to in the paragraph 1 provided
  - a) both spouses were habitually resident in the Czech Republic and the plaintiff still has habitual residence in the Czech Republic,
  - b) the plaintiff has habitual residence in the Czech Republic and the second spouse joined the application, or
  - c) the plaintiff has habitual residence in the Czech Republic and has had such habitual residence for at least one year prior to filing the action.
- (3) A jurisdiction of the Czech courts in proceedings on maintenance obligations between spouses and former spouses shall be determined by a directly applicable provision of the European Union law<sup>2</sup>.

#### *Applicable Law*

#### *§ 48*

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- (1) The capacity of a person to celebrate marriage as well as the conditions for its validity shall be governed by the law of the state of which the person is a citizen.
- (2) The form of a marriage shall be governed by the law applicable in place where the marriage is being celebrated.
- (3) A celebration of marriage at an embassy of the Czech Republic abroad shall be governed by the Czech law.
- (4) A citizen of the Czech Republic shall not celebrate marriage at an embassy of a foreign state in the Czech Republic.

## § 49

- (1) Personal relations of spouses shall be governed by the law of the state of which they are both citizens. Should they be citizens of different states, such relations shall be governed by the law of the state in which both spouses are habitually resident, otherwise by the Czech law.
- (2) Maintenance obligations between spouses shall be governed by the law determined under an international treaty the application of which is stipulated by a directly applicable provision of the European Union law<sup>2</sup>.
- (3) Property regimes of spouses shall be governed by the law of the state in which both spouses are habitually resident; otherwise by the law of the state of which both spouses are citizens; otherwise by the Czech law.
- (4) An agreement on matrimonial property regime shall be governed by the law applicable to the property regimes of spouses at the time of the agreement negotiation. Concerning an agreement on matrimonial property regime, the spouses may also agree upon that their property regimes shall be governed either by the law of the state of which one of the spouses is a citizen or in which one of the spouses is habitually resident, or by the law of the state in which an immovable property is located, should the matter concern the immovable property, or by the Czech law. The agreement shall be recorded in a notarial act or a similar document, should the agreement be concluded abroad.

## § 50

- (1) Divorce shall be governed by the law of the state governing personal relations (circumstances) of spouses at the time of the proceedings' institution.
- (2) Should it be necessary to apply foreign law under the paragraph 1 which does not allow divorce or admits it only under extremely onerous circumstances, the Czech

law shall apply provided at least one of the spouses is a citizen of the Czech Republic or at least one of the spouses is habitually resident in the Czech Republic.

- (3) When annulling marriage or when determining whether a marriage exists or not, the capacity to celebrate marriage and the form of its celebration shall be governed by laws applicable to them at the time of marriage celebration.
- (4) Maintenance obligations between former spouses shall be governed by the law chosen under an international treaty the application of which is stipulated by a directly applicable provision of the European Union law<sup>2</sup>.

## *Recognition of Foreign Judgments*

### *§ 51*

- (1) Final foreign judgments in matters of divorce, legal separation, annulment of marriage and declaring whether a marriage exists or not provided at least one of the parties was a citizen of the Czech Republic, shall be recognized in the Czech Republic only on a basis of a separate judgment, unless precluded by the provisions of § 15 paragraph 1 letters a) through e).
- (2) To declare that a judgment in a matter referred to in the paragraph 1 shall be recognized shall fall into the jurisdiction of the Supreme Court. An application therefor may be filed by the parties as well as by any person who shall prove a legitimate interest. The Supreme Public Prosecutor's Office may enter the initiated proceedings. The Supreme Court shall decide by means of a judgment, a hearing does not need to be ordered.
- (3) A judgment referred to in the paragraph 1 may be recognized only provided the factual basis was determined in a manner complying in principle with the applicable provisions of the Czech law.

### *§ 52*

If all the parties were at the decisive time period citizens of the state the judgment of which is concerned, final foreign judgments in matters referred to in § 51 shall have the same legal effects in the Czech Republic, without further proceedings, as final judgments of the Czech courts. The same shall apply to final judgments in these matters given by the authorities of other foreign states, provided such judgments are recognized in the home states of all the parties who are foreigners.

## ***Section 2 Parent – Child Regimes and Some Other Regimes***

## *§ 53 Jurisdiction in Matters of Establishment and Contesting of Parentage*

An action to establish or contest parentage shall be filed at the general court [the court of the habitual residence] of the defendant in the Czech Republic; should the defendant not have a general court there, at the general court of the plaintiff. The Czech courts shall have jurisdiction even if neither the plaintiff has a general court in the Czech Republic, however one of the parents or the child is a citizen of the Czech Republic.

## *§ 54 Applicable Law in Matters of Establishment and Contesting of Parentage*

- (1) Establishment and contesting of parentage shall be governed by the law of the state the nationality of which the child acquired by birth. If the child acquired by birth more than one nationality, the Czech law shall apply. Should it be in the interest of the child, the law of the state in which the mother was habitually resident at the time of the conception of the child shall apply.
- (2) Should the child be habitually resident in the Czech Republic and should it be in the interest of the child, the Czech law shall apply to establish and contest parentage.
- (3) Parentage shall be sufficiently established if it is under the law of the state where the recognition of parentage was declared. Contesting parentage and establishing another person as a parent in judicial proceedings or out of court in a foreign state according to a local law shall be sufficient to a valid establishment of parentage of such a person.

## *§ 55 Recognition of Foreign Judgments in Matters of Establishment and Contesting of Parentage*

- (1) The provisions of § 51 shall apply mutatis mutandis to a recognition of final foreign judgments in matters of establishment and contesting of parentage, provided at least one of the parties was a citizen of the Czech Republic,.
- (2) If all the parties were at the decisive time period citizens of the state whose final judgment is concerned, or if such a judgment of foreign authorities is recognized in the home states of all the parties who are foreigners, the provisions of § 52 shall apply mutatis mutandis to a recognition of final foreign judgments in matters of establishment and contesting of parentage.

## *§ 56 Jurisdiction in Matters of Maintenance, Custody and Care of Minors*

- (1) Where jurisdiction in matters of maintenance obligations and in matters of parental responsibility is not covered by directly applicable provisions of the European Union law, the Czech courts shall have jurisdiction in matters of maintenance, custody

and other matters of care of minors, including measures directed to the protection of their person and property, provided the minor is habitually resident in the Czech Republic or a citizen of the Czech Republic while habitually resident abroad. The Czech court shall not be obliged to initiate proceedings provided the measures taken abroad are sufficient to protect the rights and interests of a citizen of the Czech Republic.

- (2) A Czech embassy may take over the care of a minor citizen of the Czech Republic, habitually resident abroad and with no one exercising parental rights and obligations toward, to the extent of jurisdiction of the court provided such jurisdiction is recognized by the state in which the minor is habitually resident. The embassy shall immediately inform the Office for International Legal Protection of Children about the takeover of the care.
- (3) The Czech courts shall also have jurisdiction in maintenance proceedings in which a modification or a termination of a judgment given by a Czech court is proposed against the maintenance creditor habitually resident abroad.
- (4) The Czech courts shall have jurisdiction to decide, upon an application by the maintenance debtor habitually resident in the Czech Republic, to modify or terminate maintenance obligations imposed by a judgment of a foreign state's authority provided the maintenance creditor is not habitually resident in the state the authority of which has given the judgment.
- (5) In divorce proceedings of parents of a minor foreigner who is not habitually resident in the Czech Republic but is located there, the Czech courts shall have jurisdiction to regulate the rights and obligations of parents of a minor for the time after the divorce provided the minor will be located in the territory of Czech Republic and authorities of the foreign state concerned do not take other measures.

## *§ 57 Applicable Law in Matters of Maintenance, Custody and Care of Minors and of Some Other Regimes*

- (1) The relations between parents and children in maintenance matters shall be governed by the law determined under an international treaty the application of which is stipulated by a directly applicable provision of the European Union law<sup>2</sup>. The applicable law in matters of maintenance rights of creditors in other regimes shall be determined in the same manner.
- (2) In other matters of parental rights and obligations and of measures for protection of person or property of the child the applicable law shall be determined under an international treaty<sup>3</sup>.

## *§ 58 Recognition of Foreign Judgments in Matters of Minors*

Final foreign judgments in matters of maintenance, custody and care of minors and other matters concerning them, given in a state the citizen of which is a child of a foreign nationality or in which such a child is habitually resident and all the parties are foreigners, shall be recognized without further proceedings. Should such judgments impose property performance, they may be recognized and enforced unless precluded by defences stipulated in § 15 paragraph 1 letters b) through e).

## **Section 3 Rights of Unmarried Mothers**

### *§ 59*

- (1) Claims of a child's mother against the father to whom she is not married shall be governed by the law of the state in which the mother is habitually resident at the time of the child's birth. The mother may invoke the application of the law of the state of which she is a citizen at the time of the child's birth. Claims of an unmarried pregnant woman shall be governed by the law of the state in which she is habitually resident at the time of filing the application, unless she invokes the application of the law of the state of which she is a citizen at the time of filing the application.
- (2) Should a child's mother who is a foreigner be habitually resident in the Czech Republic at the time of the child's birth and should a child's father be a citizen of the Czech Republic, the rights of the child's mother shall be governed by the Czech law.

## **Section 4 Adoption**

### *§ 60 Jurisdiction*

- (1) The Czech courts shall have jurisdiction to decide upon adoption matters provided the adopter is a citizen of the Czech Republic. Should the adopters be spouses it shall be sufficient if one of them is a citizen of the Czech Republic.
- (2) Should the adopter or one of the spouses not be a citizen of the Czech Republic, the Czech courts shall have jurisdiction
  - a) provided the adopter or at least one of the adopting spouses is resident there and provided the court's judgment may be recognized in the home state of the adopter or in the home states of both adopting spouses, or

- b) provided the adopter or at least one of the adopting spouses is habitually resident in the Czech Republic.
- (3) If a minor concerned is a citizen of the Czech Republic and is habitually resident in the Czech Republic, the Czech courts shall have an exclusive jurisdiction to decide upon the minor's adoption.

## *Applicable Law*

### *§ 61*

- (1) Adoption shall be subject to conditions stipulated by the law of the state the citizen of which is the adoptee as well as of the state the citizen of which is the adopter.
- (2) Should the adopting spouses have different nationalities, the conditions stipulated by the laws of both spouses determined according to their nationalities as well as by the law of the state the citizen of which is the adoptee shall be complied with.
- (3) Should it be necessary to apply foreign law under the paragraphs 1 and 2 which does not allow adoption or admits it only under extremely onerous circumstances, the Czech law shall apply provided the adopter or at least one of the adopting spouses or the adoptee is habitually resident in the Czech Republic.

### *§ 62*

- (1) The effects of adoption shall be governed by the law of the state the citizens of which are all parties at the time of adoption, otherwise by the law of the state in which all parties are habitually resident at the time of adoption, otherwise by the law of the state the citizen of which is the adoptee.
- (2) The law determined under the provisions of § 57 shall apply mutatis mutandis to the relations between the adoptee and the adopter or the adopters in matters of parental rights and obligations, custody and maintenance.

## *Recognition of Foreign Judgments*

### *§ 63*

- (1) If at the time of adoption the adopter, one of the adopters or the adoptee was a citizen of the Czech Republic, a foreign judgment on adoption shall be recognized in the Czech Republic unless it is incompatible with the public policy, it is not prevented by an exclusive jurisdiction of the Czech courts and adoption would be allowed also under the provisions of the substantive Czech law. The provisions of § 16 paragraph 4 shall apply to the recognition proceedings.



- (2) If all the parties at the decisive time period were foreigners, foreign adoption judgments shall be recognized in the Czech Republic without further proceedings provided it is not incompatible with the public policy and such judgments would be recognized in the home states of all parties.
- (3) The provisions of paragraphs 1 and 2 shall apply mutatis mutandis to adoption abroad undertaken in a manner other than by means of a judgment.

## **Section 5 Guardianship and Curatorship of Minors**

### *§ 64 Jurisdiction*

- (1) The provisions of § 56 paragraph 1 shall apply mutatis mutandis to the jurisdiction of the Czech courts in matters of guardianship and curatorship of minors.
- (2) Should the Czech courts not have jurisdiction in these matters pursuant to the paragraph 1, the Czech court shall proceed under the provisions of § 33 paragraphs 2 and 3 mutatis mutandis.

### *§ 65 Applicable Law*

- (1) In matters of guardianship and curatorship of minors, the law of such state shall apply the court or authority of which has been seised to decide upon it. However, insofar as the protection of the person or the property of the minor requires, the law of another state with which the situation has a substantial connection may exceptionally apply or be taken into account.
- (2) If the minor's habitual residence changes and the minor is to have habitual residence in another state, the law of that other state shall govern from the time of the change the conditions for guardianship and curatorship established in the state where the minor was formerly habitually resident.
- (3) Renvoi shall not be resorted to when applying the paragraphs 1 and 2.
- (4) The provisions of § 35 and 36 shall apply mutatis mutandis.

### *§ 66 Recognition of Foreign Judgments*

The provisions of § 38 shall apply mutatis mutandis to the recognition of final foreign judgments in matters of guardianship and curatorship of minors.

## **Title VI Registered Partnership and Similar Regimes**

## § 67

- (1) The Czech courts shall have jurisdiction to decide upon termination, annulment or non-existence of a registered partnership or a similar relationship, provided the registered partnership was celebrated in the Czech Republic or at least one of the partners is a citizen of the Czech Republic and is habitually resident in the Czech Republic.
- (2) A registered partnership and similar relationships (regimes) as well as the effects thereof, the capacity to celebrate and terminate them, their annulment and non-existence shall be governed by the law of the state in which the registered partnership or a similar regime is being or has been celebrated. The same law shall apply to the personal and property relations of the partners.
- (3) Foreign judgments on termination, annulment and non-existence of a registered partnership or a similar regime given in a state in which the registered partnership or a similar regime was contracted or may be recognized, shall be recognized without further proceedings.

## Title VII Rights in Rem

### *§ 68 Jurisdiction in Rights in Immovable Properties*

The Czech courts or other competent Czech public authorities shall have an exclusive jurisdiction to decide upon rights in immovable properties located in the territory of the Czech Republic.

### *Applicable Law*

## § 69

- (1) Rights in rem in immovable properties as well as in tangible movable properties shall be governed, unless otherwise stipulated by this Act or other [Czech] law, by the law of the place where the property is located. The same law shall also apply to determine whether a property is immovable or movable one.

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- (2) Rights in vessels and aircraft registered in a public register, their creation as well as their extinguishment shall be governed by the law of the state in jurisdiction of which the register is kept.

## § 70

- (1) The creation and extinguishment of rights in rem in tangible movable properties shall be governed by the law of the place where the property was located at the time of occurrence of an event giving rise to the creation or extinguishment of the right.
- (2) The creation and extinguishment of an ownership right in tangible movable properties that are being transferred on the basis of a contract shall be governed by the law governing the contract which forms the basis for the creation and extinguishment of the ownership right.
- (3) If a legal act which shall form the basis for the creation and extinguishment of rights in rem to tangible movable properties was undertaken (performed) in a time period after the commencement of a carriage (transport) of such a property and for the duration of the carriage, such a creation and extinguishment shall be governed by the law of the place from which the property was sent. However, if the creation and extinguishment of rights in rem in these properties occur by means of disposition of a security which must be submitted in order to give (release) the property out and dispose of it, the law of the place where the security is located at the time of the disposal shall be applied.

## § 71

Provisions on registration (records) in public books and similar registers applicable in place where the immovable property or movable property is located shall apply also when the legal title for creation, extinguishment, limitation or transfer of the registered right is governed by a different legal order.

## § 72

Prescription shall be governed by the law applicable in place where the property was at the beginning of the course of the prescription period. A person entitled from prescription may, however, invoke the law of the state in the territory of which prescription took place provided from the time when the property entered the state all prescription prerequisites stipulated therefor by the law of that state have been met.

## § 73 *Trust Fund or Similar Institution*

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- (1) A trust fund or a similar institution (hereinafter referred to as the ‘fund’) shall be governed by a law chosen by the settlor provided the chosen law regulates the fund or the provisions of that law may be otherwise applied thereto.
- (2) Should a law not be chosen pursuant to the paragraph 1 or should it not be possible to apply, the fund shall be governed by the law of the state with which it has the closest connection. When determining such a law, a consideration shall be paid in particular to
  - a) a place from which the fund is administered,
  - b) a place in which the property the fund consists of is predominantly located,
  - c) a place of a seat or habitual residence of the trustee,
  - d) the purposes intended by the creation of the fund as well as to the places where these purposes are to be achieved.
- (3) If a certain element may be separated from the other fund elements, the applicable law may be determined separately thereto.
- (4) A fund established abroad shall be recognized also according to the Czech law provided it shows essential characteristics required thereto by the Czech law.

## *§ 73a General provisions*

The provisions of this title shall not apply to matters falling within the scope of a directly applicable European Union regulation.

## **Title VIII Law of Succession**

### *Jurisdiction*

#### *§ 74*

- (1) The Czech courts shall have jurisdiction to hear succession provided the deceased person was at the time of death habitually resident in the Czech Republic.

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- (2) Should an immovable property located in the territory of the Czech Republic be concerned, the Czech courts shall have an exclusive jurisdiction to hear succession.
- (3) If the deceased person at the time of death was not habitually resident in the Czech Republic, the Czech court shall have jurisdiction over the estates which are located in the Czech Republic provided the state the authority of which has jurisdiction over such a succession neither lets succession of deceased persons habitually resident in the Czech Republic to be heard by the Czech courts nor attributes legal effects to their judgments, or provided another state declines to hear succession or to issue any statement thereupon. The Czech courts shall always have jurisdiction over succession that has been left in the Czech Republic by a citizen of the Czech Republic who was habitually resident abroad provided even only one of the heirs habitually resident in the Czech Republic requests it.
- (4) In cases not referred to in the paragraphs 1 to 3 the Czech court shall limit itself to the measures necessary to secure the property of the deceased person.
- (5) In the cases referred to in the paragraph 4 the court shall provide the parties, upon a request, with an attestation declaring that the Czech courts do not have jurisdiction to hear succession; before providing it the court shall, should it be justified, make a preliminary enquiry. Should a property be given out abroad, the court shall inform local heirs and creditors thereof by means of an announcement which shall be put up for 15 days on a notice board of the court; known parties shall be delivered the notification.
- (6) The provisions of the paragraphs 4 and 5 shall not apply when a property of a negligible value is given out to the furnisher of a funeral or to a certain person in accordance with the applicable law.

## § 75

Should a property located abroad be concerned, a Czech court shall hear succession only provided another state gives such a property out to the Czech courts for a hearing or attributes legal effects to judgments of the Czech courts in such matters.

### *Applicable Law*

## § 76

Legal relations [arising out] of succession shall be governed by the law of the state in which the deceased person was habitually resident at the time of death. If the deceased person

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was a citizen of the Czech Republic and at least one of the heirs is habitually resident in the Czech Republic, the Czech law shall apply.

## § 77

- (1) A capacity to dispose or revoke a will as well as the effects of a defective intent and its expression shall be governed by the law of the state of which the deceased person is a citizen at the time of making the expression of intent or is habitually resident at that time. A law determined in the same manner shall apply to the capacity to dispose and revoke other types of dispositions of property upon death and also for determining which other types of dispositions of property upon death shall be admissible.
- (2) A will shall be valid as to its form provided the form complies to the law of the state
  - a) of which the deceased person was a citizen at the time of making an expression of intent or at the time of death,
  - b) in the territory of which the will was disposed,
  - c) in which the deceased person was habitually resident at the time of making an expression of intent or at the time of death,
  - d) which shall be applied to legal relations of succession or it was supposed to be applied to them at the time of disposing a will, or
  - e) in which an immovable property is located, should the immovable property be concerned.

The same shall apply also to the form of a will's revocation.

- (3) The provisions of the paragraph 2 shall apply mutatis mutandis to the form of an agreement as to succession or other dispositions of property upon death, when the deceased person is understood as one of the parties to the agreement as to succession. The same shall apply also to the form of a revocation of an agreement as to succession and of other dispositions of property upon death.
- (4) The deceased person may lay down in a will that instead of the otherwise applicable law the legal relations of succession shall be governed by the law of the state in which the deceased person is habitually resident at the time of disposing a will, including a succession of immovable properties, or the deceased person may lay down that the legal relations of succession including that of immovable properties shall be governed by the law of the state of which the deceased person is a citizen at the time of disposing a will.

- (5) Parties to the agreement as to succession may choose any of the laws referred to in the paragraph 4 to govern the legal relations of succession, when the deceased person is understood as one of the parties to the agreement as to succession. The same shall apply as appropriate also to other dispositions of property upon death.

## § 78

The deceased person's properties and rights located in the territory of the Czech Republic shall accrue to the Czech Republic provided there is no heir; the Czech courts shall have jurisdiction to decide in these matters. A state or another territorial unit or an institution existing for these purposes shall not be deemed as an heir, unless they were appointed an heir in a will.

### *Recognition of Foreign Judgments*

## § 79

Final foreign judgments in succession matters given in a state in which the deceased person was habitually resident at the time of death or of which he or she was a citizen, while the state gives out successions of deceased persons habitually resident in the Czech Republic to the Czech courts for a hearing or attributes legal effects of their judgments on these matters, shall be recognized without further proceedings unless prevented by the Czech courts' jurisdiction. A foreign judgment which would be contrary to the provisions of § 78 shall not be recognized.

## **Title IX Intellectual Property Rights**

## § 80

Intellectual property rights shall be governed by the law of the state which recognizes such rights and provides them with protection.

## **Title X Securities, Investment Instruments and Other Documents**

### *§ 81 Jurisdiction in Document Amortization Matters*

A Czech court shall have jurisdiction to declare as amortized documents issued abroad only provided their amortization may have, according to the nature of the matter, legal consequences in the Czech Republic.

## *Applicable Law in Matters of Securities and Investment Instruments*

### § 82

Questions whether a security is validly issued, whether there are rights associated with it in such a manner that they cannot be exercised after the issuance of a security through all the term of its validity without the security concerned, and what rights and what legal effects are connected thereto, shall be governed according to the nature of the security by

- a) the law governing the legal capacity and internal relations of a legal entity which issued the security,
- b) the law governing the legal relation for which an issuance of a security is stipulated,
- c) the law applicable in place where the security was issued,
- d) the law of the state in which an entity issuing the security has a seat or habitual residence, unless the nature of the security corresponds to an application of another law, or
- e) the law determined in a security provided the nature of the security admits it.

### § 83

- (1) Unless stipulated otherwise by law, a right to a security shall be governed by the law applicable in place where the security is located, while a transfer of a right to a security shall be governed by the law applicable in place where the security is located at the time of its disposition.
- (2) A statutory lien over a security shall be governed by the law applicable in place of habitual residence or a seat of a lien creditor in a decisive time period, unless the parties choose another law; *renvoi* shall be excluded. Should a security which must be submitted in order to give out and handle properties be concerned, the law applicable in place where the security is located in the decisive time period shall be applied.
- (3) Notwithstanding the provisions of the paragraphs 1 and 2, handling book-entry or immobilized securities or other securities entered in a depository, or handling a depository-entered right which acts as a book-entry security shall be governed by the law of the state in which the entry is undertaken; *renvoi* shall be excluded. A



choice of law shall be admissible only provided it concerns a law of a state in which the entity administering the depository has its seat or branch at the time of the choice of law and administering a depository belongs among usual activities of such an entity.

- (4) If investment instruments, including the rights associated thereto, are determined to secure the rights of
  - a) a participant in or an operator of a payment system with settlement finality, of a foreign payment system with settlement finality, of a settlement system with settlement finality or of a foreign settlement system with settlement finality provided such rights arose from his or her participation in or operating of the system, or
  - b) a central bank of a Member State of the European Union or the countries of the European Economic Area or the European Central Bank, the rights of such entities or entities acting on their behalf from a collateral security shall be governed by the law of the state where a depository of investment instruments is administered in which entries establishing legal effects of these acts are undertaken.
- (5) If investment securities, collective investment securities or money market instruments to which a proprietary right or another right in rem is evidenced by an entry in a depository are provided as a subject of a financial collateral security, or if rights arising from an entry of investment securities, collective investment securities or money market instruments in a depository are provided as a subject of a financial collateral security and enabling an authorized entity to dispose of such a security or instrument directly or indirectly in an at least similar manner as a legitimate holder,
  - a) a legal nature of the subject of a financial collateral security as well as the property-law effects of such a financial collateral security,
  - b) conditions required for a financial collateral security creation, for providing of such a subject of a financial collateral security, as well as other conditions for the financial collateral security to become effective with respect to the third persons,
  - c) proprietary or other rights over the subject of a financial collateral security arising from their entry in a depository, as well as the condition of acquisition from a person other than the owner,

- d) conditions and a manner of satisfaction from the subject of a financial collateral security provided a decisive event comes<sup>4</sup>, shall be governed by the law of the state in which the depository is administered.
- (6) A takeover bid intended for owners of securities of a participating nature issued by a public limited-liability company with a seat in the Czech Republic the securities of which are admitted to be traded on a regulated market in the Czech Republic, as well as legal issues related to a takeover bid with an international element, shall be governed by the Czech law.
- (7) A choice of a different law in the cases referred to in the paragraph 4, as well as a choice of a different law and renvoi in the cases referred to in the paragraph 5 shall be excluded.
- (8) A law applicable to the existence and transition of a statutory lien over shares and securities issued by any of the legal entities participating in a cross-border transformation [a merger or similar transaction] shall be determined under a different legislation [Act No 125/2008 Coll.].

## **Title XI Law of Obligations**

### ***Section 1 Basic Provisions***

#### *§ 84*

The provisions of this Title shall apply in connection to the directly applicable provisions of the European Union law and international treaties<sup>5</sup>. This Title shall be limited to the issues not falling into the scope of the laws and treaties, unless these laws and treaties allow the application of this Act.

### ***Section 2 Procedural Provisions***

#### *§ 85 Jurisdiction*

Jurisdiction of the Czech courts in matters of the law of obligations and of other property rights may be established also by means of a written agreement of the parties. Nevertheless the substantive (subject-matter) jurisdiction of the Czech courts shall not be altered by such an agreement.

#### *§ 86 Determining Jurisdiction of Foreign Court*

- (1) Jurisdiction of a foreign court in matters of the law of obligations and of other property rights may be determined by means of a written agreement of the parties. In matters of insurance and consumer contracts such an agreement shall be admissible only after a dispute arises or provided it enables only the policyholder, the insured, another beneficiary, the injured or the consumer to initiate proceedings in the courts of another state.
- (2) If jurisdiction of a foreign court is determined pursuant to the paragraph 1, jurisdiction of the Czech courts shall thereby be excluded; a Czech court shall nevertheless hear the case provided
  - a) the parties unanimously declare their intent not to insist on the agreement,
  - b) a judgment given abroad would not be recognized in the Czech Republic,
  - c) a foreign court declined to hear the case, or
  - d) a jurisdiction agreement is contrary to the public policy.

## **Section 3 Contracts**

### § 87

- (1) Contracts shall be governed by the law of the state with which the contract is the most closely connected, unless the parties have chosen the applicable law. The choice of law shall be made expressly or shall be undoubtedly demonstrated by the terms of the contract or the circumstances of the case.
- (2) If a legal relation established (created) by means of a consumer contract is closely connected with the territory of a Member State of the European Union, a consumer shall not be deprived of the protection granted under the Czech law provided the proceedings are undertaken in the Czech Republic, although a law of a state other than a Member State of the European Union has been chosen or otherwise determined to apply to the contract.
- (3) Insurance contracts shall be governed by the law of the state where the policyholder is habitually resident. Contractual parties may choose the law applicable to the insurance contract; should an insurance contract covered by a directly applicable provision of the European Union law be concerned, the parties may to an extent admitted by such a provision choose any applicable law.

- (4) A consumer shall not be deprived of the protection granted by law in case a contract regarding the use of one or more establishments providing accommodation against consideration for more than one time period provided the contract is concluded for a period longer than one year (hereinafter referred to as the ‘timeshare’), the benefits of accommodation provided the contract is concluded for a period longer than one year (hereinafter referred to as the ‘long-term holiday product’), assistance in the timeshare or the long-term holiday product transfer against consideration or participation in an exchange system enabling consumers to mutually transfer the right to use the establishment providing accommodation or other services related to the timeshare under another legislation, all provided the applicable law is other than the law of a Member State of the European Union, provided the proceedings are undertaken in the Czech Republic and provided
- a) any of the immovable properties concerned is situated within the territory of a Member State of the European Union, or
  - b) in connection with an immovable property concerned, an entrepreneur pursues activities in the territory of a Member State of the European Union or the activities are by any means directed in the territory of a Member State of the European Union.

## ***Section 4 Labour Law***

### *§ 88 Jurisdiction*

- (1) Jurisdiction of the Czech courts in labour matters may be established also by means of a written agreement of the parties. Nevertheless the substantive (subject-matter) jurisdiction of the Czech courts shall not be altered by such an agreement.
- (2) If the Czech courts shall otherwise have jurisdiction, jurisdiction of foreign courts may be agreed upon in writing only after a dispute arises or provided the agreement enables only an employee to initiate proceedings in the courts of another state. The provisions of § 86 paragraph 2 shall apply mutatis mutandis.

### *§ 89 Law Applicable to Certain Employments*

An employment established by means other than of a contract shall be governed by the law of the state under which the employment was established.

## ***Section 5 Unilateral Legal Acts***

### *§ 90*

Legal relations arising from unilateral legal acts shall be governed by the law of the state in which the person undertaking the unilateral legal act had habitual residence or seat at the time when the legal act was undertaken, unless the person has chosen the application of a different law.

## ***Section 6 Security of Obligation, Consequences of Breach and Alteration of Obligation***

### *§ 91*

- (1) A security of obligation shall be governed by the same law as the secured obligation, unless a right in rem is concerned or it follows otherwise from law or nature of the matter or the parties or a party who provided the security by means of a unilateral expression of intent chooses the application of another law. A statutory lien over claims and other rights shall be governed by the same law as the claim or other right over which the statutory lien was established, unless the parties choose the application of another law. A choice or change of the applicable law shall not prejudice the rights of third parties. Only rights following from the law governing the secured obligation may be exercised against the debtor.
- (2) The consequences of a breach of obligation shall be governed by the law governing the obligation.
- (3) A transfer of rights and obligations by operation of law shall be governed by the law applicable to cases for which the law stipulates such a transfer, unless it follows otherwise from the nature of the matter. The right and obligation itself shall remain to be governed by the same law as before the transfer.

## ***Section 7 Set-Off***

### *§ 92*

Set-off shall be governed by the same law as the claim against which the right to set-off is asserted. The parties may by means of an agreement choose the application of a different law.

## ***Section 8 Bill of Exchange and Cheque Law Regimes***

### ***§ 93***

- (1) Effects of binding declarations of a bill of exchange recipient and of a promissory note issuer shall be governed by the law of the payment place.
- (2) Effects of other bill of exchange declarations shall be governed by the law of the state in which they were made.

### ***§ 94***

Time limits for exercising recourse rights by all persons bound by a bill of exchange shall be governed by the law of the place where the bill of exchange was issued.

### ***§ 95***

The law of the place where the bill of exchange was issued shall govern whether a bill of exchange owner acquires a claim which forms the basis for the issuance of the bill of exchange.

### ***§ 96***

The law of the payment place shall govern whether it is possible to limit the acceptance of bills of exchange to a part of the bill of exchange sum and whether the owner is obliged to accept a partial payment. The same principle shall apply to the payment of promissory notes.

### ***§ 97***

The law of the payment place shall govern measures which have to be undertaken should the bill of exchange get lost or stolen.

### ***§ 98***

Effects of cheque declarations shall be governed by the law of the state in which they were made.

### ***§ 99***

# BŘÍZA & TRUBAČ

Time limits for exercising recourse rights by all persons bound by a cheque shall be governed by the law of the place where the cheque was issued.

## *§ 100*

The law of the state in which a cheque is payable shall govern

- a) whether the cheque must be payable at sight or whether it can be exposed to a certain time after sight and what effects occur when the cheque lists a later day than an actual date of issuance,
- b) the period for submission,
- c) whether it is possible to accept a cheque, verify, confirm or authorize it, and what effects such clauses shall have,
- d) whether the owner may request a partial payment and be obliged to accept it,
- e) whether a cheque may be crossed or provided with an 'only to settlement' certificate or a certificate of the same meaning and what effects crossing or a settlement certificate or a certificate of the same meaning shall have,
- f) whether the owner is vested with special rights for coverage and what is the content of such rights,
- g) whether the issuer can revoke a cheque or state opposition against the payment of a cheque,
- h) the measures which have to be undertaken should the cheque get lost or stolen,
- i) whether a protest or a finding of the same meaning is necessary to preserve recourse rights against the endorser, the issuer and other persons bound by the cheque.

## ***Section 9 Certain Non-Contractual Obligations***

## *§ 101*

Non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation, shall be governed by the law of the state in which the violation occurred. Nevertheless the affected (injured) person may choose the law of the state in which

- a) the affected person has habitual residence or seat,

- b) the violation initiator (perpetrator) has habitual residence or seat, or
- c) the result of a violating conduct appeared (manifested itself) provided the violation agent could predict it.

## ***Part Five Judicial Cooperation in Relations with Foreign States***

### ***§ 102***

Unless stipulated otherwise, courts shall contact (communicate with) foreign authorities through the Ministry of Justice.

### ***§ 103***

Upon a request of a foreign court or authority, the Czech court shall provide judicial cooperation (assistance) under the condition of reciprocity. Judicial cooperation may be refused

- a) should the performance of the requested act not fall within the jurisdiction of the requested Czech court; nevertheless should its performance fall within the jurisdiction of another court or other Czech public authorities, the request will be forwarded for a hearing to a court or other competent public authority, or
- b) when a performance of an act contrary to the public policy is requested.

### ***§ 104***

- (1) The requested judicial cooperation shall be provided under the Czech law; upon a request of a foreign authority, a foreign procedural provision may be followed provided the requested procedure is not contrary to the public policy.
- (2) If a foreign authority requests, witnesses, experts and parties may be heard also under oath. This shall also apply when a sworn declaration must be submitted abroad concerning facts relevant to the making or keeping of the claims.
- (3) An oath of witnesses and parties shall read as follows: 'I hereby solemnly swear on my honour to tell the whole and clear truth and not withhold anything I may be asked about by the court.'
- (4) An expert's oath shall read as follows: 'I hereby solemnly swear to provide my expert opinion to the best of my knowledge and belief.'
- (5) Should a subsequent oath be concerned, the wording of the oath shall be modified accordingly.



## § 105

If a foreign document is not provided with a certified translation into the Czech language, it shall be served to the recipient provided the recipient is willing to accept it; the recipient shall be informed that he or she must be aware of the legal consequences which may occur abroad should he or she refuse to accept the document.

## § 106

- (1) Upon a request of a Czech court, a Czech embassy shall perform
  - a) service to persons in the state of its jurisdiction, provided it is admissible under an international treaty or general international law or provided it is not precluded by laws of the state where the act is to be performed,
  - b) service to the citizens of the Czech Republic in the state where the act is to be performed who enjoy diplomatic privileges and immunities there, as well as questioning of such citizens as witnesses, experts or parties to the proceedings,
  - c) questioning of witnesses, experts and parties to the proceedings as well as other procedural acts, should such persons come voluntarily and provided it is not precluded by provisions applicable in the state where the act is to be performed or provided it is not precluded by serious defenses.
- (2) A Czech embassy shall proceed appropriately under laws for the requesting court and the acts performed by the embassy shall have the same effect as if they were performed by the court itself.
- (3) If succession proceedings are conducted abroad and the circumstances suggest that the heir is a citizen of the Czech Republic or is habitually resident in the territory of the Czech Republic, the court shall upon a request of the Ministry of Foreign Affairs perform acts leading to the identification of the heir. A district court in the district of which the identified person is supposed to be staying shall have local jurisdiction, otherwise a court in the district of which is the seat of the Ministry of Foreign Affairs.

## § 107

Service effected upon a request of a Czech court by a foreign authority as well as evidence taken before it shall be effective even when not in accordance with the provisions of a foreign law provided they comply with the Czech legislation.

## § 108 *Certificate of Czech Law*

The Ministry of Justice shall issue a certificate on the law applicable (effective) in the Czech Republic to those who need it to assert their rights abroad. Such a certificate shall not provide an interpretation of a provision or an interpretation of how to apply a provision to a particular legal matter.

## *§ 109 Superlegalisation of Documents*

Upon a request of a document's holder, the Ministry of Justice and consequently the Ministry of Foreign Affairs shall attach its superlegalisation to documents issued or legalised by courts or to documents prepared or legalised by a notary or a bailiff which are to be applied abroad. A superlegalisation cannot be attached to a simple copy of the document.

## *§ 110 Opinion of Ministry of Justice*

Upon a request of a court, in case of its doubts when hearing matters covered by this Act, the Ministry of Justice shall provide its opinion.

## ***Part Six Insolvency Proceedings***

### **Title I General Provisions**

#### *§ 111*

- (1) Should the Czech courts have jurisdiction to open insolvency proceedings under a directly applicable legislation of the European Union, the proceedings shall extend also to the debtor's assets in a foreign state other than a Member State of the European Union provided the foreign state attributes effects to the proceedings in its territory; the extension is effective to the extent of the attributed effects. An insolvency liquidator shall exercise his or her powers also in the territory of a foreign state provided the law of the foreign state allows it and only within the limits of such law.
- (2) The Czech courts may open and conduct insolvency proceedings if the debtor has an establishment in the Czech Republic provided it is requested by the creditor with habitual residence or seat in the Czech Republic or the creditor's claim arose in connection with the establishment's activities. The effects of the proceedings shall be in such a case limited to the assets in the Czech Republic.

- (3) In addition to cases governed by the directly applicable legislation of the European Union, its conflict-of law provisions may apply appropriately.
- (4) If a judgment on insolvency of a participant of a payment system with settlement finality, of a foreign payment system with settlement finality, of a settlement system with settlement finality or of a foreign settlement system with settlement finality was given, or if another judgment against that party was issued or other action with similar effects undertaken by a public authority, the rights and obligations of the participant arising from the participation in the system shall be governed by the same law which governs a legal relation between the system parties during settlement. The choice of another law shall be excluded.
- (5) A foreign judgment in the insolvency proceedings matters shall be recognized under the condition of reciprocity provided in a foreign state in which it was given the debtor has a center of main interests and provided the debtor's assets in the Czech Republic are not a subject of pending proceedings according to the paragraph 2. In these cases and also otherwise, unless the property which became a subject of insolvency proceedings abroad is a subject of initiated insolvency proceedings before a Czech court, the debtor's movable properties located in the Czech Republic shall be given out (extradited) to a foreign court at its request, provided a court of a state which maintains reciprocity is concerned. Nevertheless the debtor's assets may be given out abroad only when the rights to exclude properties from the estate have been satisfied as well as the rights of secured creditors acquired before the request of a foreign court or other competent authority was received.
- (6) Paragraphs 1 to 5 shall also apply to public preventive restructuring proceedings under the Act on Preventive Restructuring.

## Title II Insolvency of Financial Institution

### § 112

- (1) A financial institution, for the purposes of this Act, means a bank, a savings and loan association, a foreign bank provided it enjoys the benefits of a single license under the European Union law, in the case of the paragraphs 2, 5 through 9, and 12 through 14, and in the case of the paragraphs 2 and 5, section 113 paragraphs 1 through 3 and section 114 paragraphs 1 through 3 also a foreign bank from a state other than a Member State of the European Union or a state of the European

Economic Area (hereinafter referred to as ‘Member State’) which has a branch in at least two Member States, a securities trader which is an investment firm within the meaning of Article 4 paragraph 1 point 2 of Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms, a branch through which a foreign person established in another Member State of the European Union, which is an investment firm within the meaning of Article 4 paragraph 1 point 2 of Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms, provides investment services in the Czech Republic and an obliged person pursuant to Section 2 paragraphs b and c of the Act on Recovery Procedures and Crisis Resolution in the Financial Market, if a crisis resolution measure has been applied pursuant to the Act on Recovery Procedures and Crisis Resolution in the Financial Market.

- (2) An insolvency of a financial institution, for the purposes of this Act, means a situation solved by
  - a) collective proceedings led against a financial institution, opened and monitored by the administrative or judicial authorities of a Member State with the aim of realizing assets under the supervision of those authorities, including where the proceedings are terminated by debt relief (deleverage) or by other measures with the same effect (hereinafter referred to as ‘bankruptcy proceedings’), or
  - b) measures the purpose of which is to preserve or restore the financial situation of a financial institution and which could affect third parties’ pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement of claims, suspension of enforcement measures or reduction of claims (hereinafter referred to as ‘reorganization’).
- (3) Reorganization shall be applied in accordance with the laws and procedures applicable in the state where the financial institution received a license or a similar authorization, unless otherwise stipulated below.
- (4) Bankruptcy proceedings shall be conducted in accordance with the laws and procedures applicable in the state where a financial institution has been granted a license or a similar authorization, unless otherwise specified below, in particular concerning
  - a) the assets subject to administration and the treatment of assets acquired by the financial institution after the opening of bankruptcy proceedings,

- b) the respective powers of the financial institution and the person conducting bankruptcy proceedings,
  - c) the conditions under which set-offs may be invoked,
  - d) the effects of bankruptcy proceedings on current contracts to which the financial institution is party,
  - e) the effects of bankruptcy proceedings on proceedings and arbitration proceedings brought by individual creditors, with the exception of proceedings as provided for in § 114 paragraph 2,
  - f) the claims which are to be lodged against the financial institution and the treatment of claims arising after the opening of bankruptcy proceedings,
  - g) the rules governing the lodging, verification and admission of claims,
  - h) the rules governing the distribution of the proceeds of the realization of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of bankruptcy proceedings by virtue of a right in rem or through a set-off,
  - i) the conditions for and the effects of the closure of bankruptcy proceedings,
  - j) creditors' rights after the closure of bankruptcy proceedings,
  - k) who is to bear the costs and expenses incurred in the bankruptcy proceedings, or
  - l) the rules relating to the voidness, voidability or unenforceability of legal acts due to their detrimental effects upon creditors<sup>7</sup>.
- (5) The effects of the opening of bankruptcy proceedings and reorganization on
- a) employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract,
  - b) a contract conferring the right to make use or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated; that law shall also determine whether the property is movable or immovable, c) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

## § 113

- (1) The exercise and enforcement of rights in investment instruments the existence or transfer of which presupposes their recording in a register, an account or a centralized deposit system held or located in a Member State shall be governed by the law of that state.
- (2) Netting agreements shall be governed solely by the law of the contract which governs such agreements.
- (3) Without prejudice to the paragraph 1,
  - a) repurchase agreements shall be governed solely by the law of the contract which governs such agreements,
  - b) transactions carried out in the context of a regulated market of financial instruments shall be governed solely by the law of the contract which governs such transactions.
- (4) The provisions of § 112 paragraph 4 shall not apply to the rules relating to the voidness, voidability or unenforceability of legal acts due to their detrimental effects upon creditors provided the beneficiary of these acts provides proof that
  - a) the act detrimental to the creditors is subject to the law of a Member State other than the state which issued the financial institution's license or a similar authorization, and
  - b) that law does not allow any means of challenging that act in the case in point.
- (5) The provisions of § 112 paragraph 3 shall not apply to the rules relating to the voidness, voidability or unenforceability of legal acts due to their detrimental effects upon creditors following from the enactment of reorganization decided on by a court provided the acts were performed before the adoption of reorganization and provided the beneficiary of these acts provides proof that
  - a) the act detrimental to the creditors is subject to the law of a Member State other than the state which issued the financial institution's license or a similar authorization, and
  - b) that law does not allow any means of challenging that act in the case in point.

## § 114

- (1) Where, by an act concluded after the opening of bankruptcy proceedings or the adoption of a reorganization measure, a financial institution disposes, for consideration, of
  - a) an immovable property,
  - b) a ship or an aircraft subject to registration in a public register, or
  - c) investment instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralized deposit system held or located in a Member State, the effects of that act shall be governed by the law of the Member State within the territory of which the immovable property is situated or under the authority of which that register, account or deposit system is kept.
- (2) The effects of reorganization or bankruptcy proceedings on a pending lawsuit concerning an asset or a right of which the financial institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.
- (3) The possibility to demand the set-off of claims against the claims of the financial institutions shall be governed by the law applicable to the financial institution's claim; this shall not preclude the provisions of § 112 paragraph 4 letter l).
- (4) In the cases referred to in paragraphs 1 through 3, § 112 paragraphs 3 through 5, and § 113 The Choice of Another Law Shall be Excluded.

## Title III Insolvency of Insurance Undertakings

### § 115

- (1) An insolvency of an insurance undertaking, for the purposes of this Act, means a situation solved by
  - a) collective proceedings involving realizing the assets of an insurance undertaking and distributing the proceeds among its creditors, shareholders or members as appropriate, which necessarily involve any intervention by the administrative or judicial authorities of a Member State, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or

compulsory (hereinafter referred to as the ‘winding-up proceedings in the event of bankruptcy of an insurance undertaking’), or

- b) measures involving any intervention by the administrative or judicial authorities of the Member State which are intended to preserve or restore the financial situation of an entity and which may affect pre-existing rights of third parties, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement of claims, suspension of enforcement measures or reduction of claims (hereinafter referred to as ‘reorganization measures in the event of bankruptcy of an insurance undertaking’).
- (2) An insurance undertaking, for the purposes of this Act, means also a branch of an insurance undertaking provided the seat of the insurance undertaking is not in the territory of a Member State and provided the insurance undertaking has been granted an authorization to carry out activities in a Member State in accordance with the European Union law.
- (3) A reorganization measure in the event of bankruptcy of an insurance undertaking including its branches shall be conducted in accordance with the laws and procedures applicable in the state where an insurance undertaking has been granted an authorization to carry out activities, unless otherwise specified below<sup>8</sup>. The reorganization measure shall not preclude the opening of the winding-up proceedings. The reorganization measure shall be effective in all Member States upon its entry into force in the state under the first sentence.
- (4) Winding-up proceedings in the event of bankruptcy of an insurance undertaking shall be conducted in accordance with the laws and procedures applicable in the state where an insurance undertaking has been granted an authorization to carry out activities, unless specified otherwise below, in particular concerning
- a) the assets which form part of the estate and the treatment of assets acquired by or devolving on the insurance undertaking after the opening of the winding-up proceedings in the event of bankruptcy of an insurance undertaking and the liquidator,
  - b) the respective powers of the insurance undertaking and the liquidator,
  - c) the conditions under which set-off may be invoked,



- d) the effects of the winding-up proceedings in the event of bankruptcy of an insurance undertaking on current contracts to which the insurance undertaking is a party,
  - e) the effects of the winding-up proceedings in the event of bankruptcy of an insurance undertaking on court and arbitration proceedings brought by individual creditors, with the exception of lawsuits as provided for in § 116 paragraph 4,
  - f) the claims which are to be lodged against the insurance undertaking's estate and the treatment of claims arising after the opening of the winding-up proceedings in the event of bankruptcy of an insurance undertaking,
  - g) the rules governing the lodging, verification and admission of claims,
  - h) the rules governing the distribution of proceeds from the realization of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of the winding-up proceedings in the event of bankruptcy of an insurance undertaking by virtue of a right in rem or through a set-off,
  - i) the conditions for and the effects of closure of the winding-up proceedings in the event of bankruptcy of an insurance undertaking, in particular by composition,
  - j) creditors' rights after the closure of the winding-up proceedings in the event of bankruptcy of an insurance undertaking,
  - k) who is to bear the costs and expenses incurred in the winding-up proceedings in the event of bankruptcy of an insurance undertaking, or
  - l) the rules relating to the voidness, voidability or unenforceability of legal acts due to their detrimental effects upon creditors.
- (5) The effects of a reorganization measure in the event of bankruptcy of an insurance undertaking or of an opening of the winding-up proceedings in the event of bankruptcy of an insurance undertaking on
- a) employment contracts and relationships including corresponding relationships shall be governed solely by the law of the Member State applicable to the employment contract or employment relationship,

- b) a contract conferring the right to make use or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated,
- c) rights with respect to immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

## § 116

- (1) Without prejudice to the rights in rem of creditors or third parties in respect of assets belonging to the debtor, the effects of a reorganization measure in the event of bankruptcy of an insurance undertaking or of the winding-up proceedings in the event of bankruptcy of an insurance undertaking on the rights and obligations of the parties on a regulated market shall be governed by law applicable to the market; this shall not preclude the application of § 115 paragraph 4 letter l) upon legal acts arising in order to suspend payments or transactions governed by the law applicable to that market.
- (2) The provisions of § 115 paragraph 4 letter l) shall not apply to the rules relating to the voidness, voidability or unenforceability of legal acts due to their detrimental effects upon creditors provided the beneficiary of these acts provides proof that
  - a) the act detrimental to the creditors is subject to the law of a Member State other than the state which issued the insurance undertaking's authorization to carry out activities, and
  - b) that law does not allow any means of challenging that act in the case in point.
- (3) Where, by an act concluded after the adoption of a reorganization measure in the event of bankruptcy of an insurance undertaking or the opening of the winding-up proceedings in the event of bankruptcy of an insurance undertaking, an insurance undertaking disposes, for a consideration, of
  - a) an immovable property,
  - b) a ship or an aircraft subject to registration in a public register, or
  - c) investment or other securities or rights to them the existence or transfer of which presupposes their entry in a register, an account or a centralized deposit system held or located in a Member State, the effects of that act

shall be governed by the law of the Member State within the territory of which the immovable property is situated or under the authority of which the register, account or deposit system is kept.

- (4) The effects of a reorganization measure in the event of bankruptcy of an insurance undertaking or of the winding-up proceedings in the event of bankruptcy of an insurance undertaking on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.
- (5) The possibility to demand the set-off of claims against the claims of the debtor shall be governed by the law applicable to the debtor's claim; this shall not preclude the provisions of § 115 paragraph 4 letter l).
- (6) In the cases referred to in paragraphs 1 and 3 through 5 and § 115 paragraph 3 through 5, the choice of another law shall be excluded.

## **Part Seven Arbitration and Recognition and Enforcement of Foreign Arbitral Awards**

### *§ 117 Arbitration Agreement*

- (1) An admissibility of an arbitration agreement shall be judged according to the Czech law. Other constituents of the arbitration agreement shall be judged according to the law of the state in which an arbitral award is to be issued.
- (2) A form of the arbitration agreement shall be governed by the law applicable to other constituents of the arbitration agreement; nevertheless it shall be sufficient if a law of the place or places where the intent was manifested is to apply.

### *§ 118 Right of Foreigner to be Designated as Arbitrator*

A foreigner may also be designated as an arbitrator provided he or she has legal capacity under the law of the state of which he or she is a citizen; it shall however be sufficient if the foreigner has legal capacity under the Czech law. Other requirements for the performance of duties of an arbitrator designated for a resolution of disputes arising from consumer contracts shall be stipulated by other legislation [Act. No 216/1994 Coll., as amended].

### *§ 119 Determination of Applicable Law*

A law applicable to a dispute shall be the law chosen by the parties. If the parties have not chosen such law, it shall be determined by the arbitrators in accordance with the provisions of this Act. The conflict-of-law provisions of the applicable law shall be taken into consideration only provided it follows from the choice of law made by the parties. Should the parties expressly mandate the arbitrators thereto, the arbitrators may decide the dispute in accordance with the principles of justice; should disputes arising from consumer contracts be concerned, consumer protection provisions of the otherwise applicable law shall be applied. The provisions of § 87 paragraph 2 shall also apply to the decision making in the arbitration proceedings.

## *Recognition and Enforcement of Foreign Arbitral Awards*

### *§ 120*

Arbitral awards issued in a foreign state shall be recognized and enforced in the Czech Republic as the Czech arbitral awards provided reciprocity is guaranteed. Reciprocity shall be considered to be guaranteed also in the case that one state generally declares foreign arbitral awards enforceable under the condition of reciprocity.

### *§ 121*

Recognition or enforcement of a foreign arbitral award shall be refused if the foreign arbitral award

- a) is not final or enforceable under the law of the state where it was made,
- b) was set aside in a state in which or under the law of which it was made,
- c) is vitiated by an error which is a reason for setting aside of the Czech arbitral award by a court, or
- d) is contrary to the public policy.

### *§ 122*

- (1) Recognition of a foreign arbitral award shall not be rendered in a separate judgment. While maintaining the conditions of § 120 and 121, a foreign arbitral award shall be recognized by the fact that it is taken into consideration (account) as if it was a Czech arbitral award.
- (2) A foreign arbitral award may be recognized by a special judgement upon application. The district court which is the general court of the person who seeks recognition shall have local jurisdiction to pronounce the recognition, otherwise the district court in whose district the fact in respect of which the recognition is relevant

has occurred or may occur, unless the provisions of this Act or another legal regulation indicate otherwise. The court shall decide on the recognition by judgment; it need not order a hearing.

- (3) Enforcement of a foreign arbitral award shall be ordered by a reasoned decision of a Czech court.

## Part Eight Transitional and Final Provisions

### *§ 123 Transitional Provisions*

- (1) An establishment and existence of legal relations and facts which arose from them before the entry of this Act into force, including the choice of law, shall be judged under the existing (preceding) legislation. The provisions of this Act shall apply to legal relations established even before its entry into force provided they are of a continuous, long-lasting nature and include repeated and lasting acts of participants as well as facts important for them after the date of entry of this Act into force, in respect of such acts and facts.
- (2) The provisions of the existing (preceding) legislation on jurisdiction of the Czech courts shall continue to apply to proceedings initiated prior to the date of entry of this Act into force. This shall also apply to proceedings in matters of recognition and enforcement of foreign judgments and foreign arbitral awards concerning the conditions for their recognition and enforcement.

[...]

## Part Nine Entry into Force

### *§ 125*

This Act shall enter into force as of 1 January 2014.