Global Financial Services Regulatory Guide - Czech Republic

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# Topics

## Topics

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Czech Republic

# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

The Czech National Bank (CNB) is the Czech Republic’s main regulator, with the responsibility to authorize or register, as applicable, and supervise banks, insurers and other financial institutions. The CNB regulates the following entities, among others:

Czech banks, Czech branches of foreign non-European Economic Area (non-EEA) banks, credit unions and, to a limited extent, foreign EEA banks operating in the Czech Republic on the basis of the EEA passport via a Czech branch

Czech insurance companies, Czech reinsurance companies, insurance intermediaries, independent loss adjusters, branches of foreign non-EEA insurance and reinsurance companies, and to a limited extent, foreign EEA insurance companies operating in the Czech Republic on the basis of the EEA passport (directly or via a Czech branch)

Czech Payment institutions, foreign EEA payment institutions operating in the Czech Republic based on the EEA single license, Czech small-scale payment service providers, operators of payment systems with settlement finality, Czech electronic money institutions, foreign EEA electronic money institutions operating in the Czech Republic based on the EEA passport, Czech small-scale electronic money issuers

Czech bank and non-bank investment firms (i.e., securities dealers), Czech branches of foreign non-EEA investment firms, investment intermediaries, tied agents of investment firms and investment intermediaries, and to a limited extent, foreign EEA investment firms operating in the Czech Republic based on the EEA passport (directly or via a Czech branch)

Securities issuers, the central depository (i.e., the main Czech securities depository), other entities keeping a register of investment instruments

Organizers of trading venues (i.e., regulated markets, multilateral trading facilities and organized trading facilities), operators of settlement systems with settlement finality, credit rating agencies

Investment companies and investment funds

Providers and intermediaries of consumer credit

*Bureaux-de-change*

Pension funds, pension companies and other entities active in supplementary pension savings, pension savings and private pension schemes pursuant to special legislation private pension schemes, supplementary pension savings and pension savings

Entities operating in the Czech Republic on the basis of the EEA passport are subjects to the regulations and supervision of the country in which their headquarters are located.

The CNB is also responsible for the macro-supervision of the banking and financial services industries and the supervision of the banks, credit unions, investment firms and insurance companies in financial conglomerates. In addition, it operates the only interbank payment system in the Czech Republic.

Certain powers of supervision are also vested in the Financial Analytical Office, for example, under the Act on Certain Measures Against the Legalization of Proceeds from Criminal Activity and Financing of Terrorism. The Financial Analytical Office is entitled to suspend suspicious transactions which the obliged entities are required to report or freeze the assets in such transaction for a limited period. The Financial Analytical Office also deals with administrative offenses under the Act on Certain Measures Against the Legalization of Proceeds from Criminal Activity and Financing of Terrorism and may impose substantial fines or bans on activities of the obliged entities.

The European Union (EU) Supervisory Authorities (the European Banking Authority, the European Securities and Markets Authority, and the European Insurance and Occupational Pension Schemes Authority) play an important role in issuing technical standards and in some limited respects have powers of supervision over Czech firms.

The European Central Bank (ECB) is the supervisor of Eurozone banks under the EU’s Single Supervisory Mechanism (SSM). As the Czech Republic is not in the Eurozone, Czech banks are not within the scope of the SSM. However, Eurozone branches or subsidiaries of Czech banks are in some cases within the scope of the SSM and the supervision of the ECB.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Much of the relevant law in the Czech Republic is derived from EU directives and regulations. In many respects, therefore, Czech domestic legislation and rules simply give effect to pan-European legal requirements. However, since many European directives only set minimum standards, the way in which directives have been implemented across Europe can vary. In other words, the Czech Republic and other European jurisdictions have introduced domestic laws that exceed European level requirements. Moreover, directives contain obligations and discretions at a member state level, and the Czech Republic also has various domestic rules.

Czech law governing the banking and financial services is contained in separate acts for each category of the services. Accordingly, the relevant regulatory laws in the Czech Republic include the following, among others:

The Act on Banks (No. 21/1992 Coll.)

The Act on Business Activities on the Capital Market (No. 256/2004 Coll.)

The Act on Bonds (No. 190/2004 Coll.)

The Act on Investment Companies and Investment Funds (No. 240/2013 Coll.)

The Act on Insurance Industry (No. 277/2009 Coll.)

The Act on Financial Conglomerates (No. 377/2005 Coll.)

The Act on Distribution of Insurance and Reinsurance (No. 170/2018 Coll.)

The Act on Payment Systems (No. 370/2017 Coll.)

The *Bureaux-de-Change* Act (No. 277/2013 Coll.)

The Advertising Act (No. 40/1995 Coll.)

The Trade Licensing Act (No. 455/1991 Coll.)

The Consumer Credit Act (No. 257/2016 Coll.)

The Act on Certain Measure against the Legalisation of Proceeds from Criminal Activity and Financing of Terrorism (No. 253/2008 Coll.)

In addition to the above acts, the general rules applicable to the supervision by the CNB are contained in the Act on Czech National Bank (No. 6/1993 Coll.) and the Act on Supervision in the Capital Market Area (No. 15/1998 Coll.). General rules applicable to financial instruments (securities) are also contained in the Czech Civil Code (Act. No. 89/2012 Coll.) and the Business Corporations Act (Act. No. 90/2012 Coll.). There is also a large volume of secondary and delegated legislation. Additionally, the CNB issues rules and guidance, which apply to the entities that the CNB regulates.

The majority of the applicable regulatory laws (although not always up to date) are available in English at: <https://www.cnb.cz/en/supervision-financial-market/legislation/>

Please be advised that these are English translations of the applicable Czech law and should be used solely for information purposes.

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

The Czech Republic regulates a broad range of activities, including the following:

Accepting deposits – This covers typical retail banking activities involving the operation of current and deposit accounts.

Issuing electronic money – Electronic money is a prepaid electronic payment product that can be card- or account-based.

Carrying on payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquiring card transactions and the operation of payment accounts.

Consumer lending – This covers a broad range of subjects providing credit to consumers, both as plain consumer credit and as mortgage consumer credit.

Carrying on insurance business – This involves effecting and carrying out contracts of both life and general insurance.

Trading in investment instruments as principal or as agent on the basis of client’s instruments – This predominantly covers entities such as investment firms.

Arranging transactions in investment instruments – This activity predominantly covers the role of intermediaries and tied agents in transactions with investment instruments.

Investment advice in relation to investment instruments and investment mediation (this does not include advice on capital structure, industrial strategy, and related matters and advice and services relating to mergers and the purchase of undertakings; provision of such advice and services does not require CNB license).

Insurance mediation activities – Czech regulation covers various insurance brokering activities as well as the handling of claims on behalf of the insured.

Investment management – Managing investment instruments on behalf of another person is a regulated activity. Specific permission is required where a person carries on this activity in relation to an investment fund.

Establishing, operating and winding up an investment fund – These include collective investment funds and funds of qualified investors.

Providing custody (safeguarding and administration of investment instruments) – Providing custody services in relation to assets that include investment instruments is a regulated activity. Specific permission is required to act as the depositary of an investment fund.

What is the regulatory status of crypto-assets and cryptocurrencies in your jurisdiction?

The Czech Republic regulates a broad range of activities surrounding cryptocurrencies, fostering an environment for the development of crypto-assets and cryptocurrencies within the established legal framework. Ordinarily, only a general trade license is required for activities regarding crypto-assets and cryptocurrencies. However, in some cases, specific permission is required.

Certain cryptocurrencies may be deemed electronic money. Notably, if a cryptocurrency represents a claim against its issuer, is issued against the receipt of funds for payment transactions, and is accepted by parties other than the issuer, it could qualify as electronic money. Stablecoins, backed by centralized services ensuring exchange guarantees, might meet this criterion. Consequently, entities issuing such digital tokens may require registration or licensing from the CNB to operate as electronic money issuers.

The CNB does not classify crypto-assets as traditional investment instruments. However, trading derivatives linked to crypto-asset prices or managing investors' assets invested in crypto-assets necessitates authorization. Individuals engaged in continuous, profit-oriented cryptocurrency mining are considered entrepreneurs, requiring a trade license.

The provision of services encompassing the sale, purchase, holding, exchange, and other activities associated with crypto-assets falls under regulatory purview. While the purchase or sale of crypto-assets for personal accounts generally does not require special authorization, specific situations involving currency exchange necessitate adherence to payment transaction regulations.

The Czech anti-money laundering legislation broadly designates obliged entities in the context of crypto-assets. Providers offering exchange services between crypto-assets and fiat currencies, along with those offering crypto-related services in their business activities, are categorized as virtual asset service providers and must comply with anti-money laundering rules.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Where an entity outside the Czech Republic deals with a client or a counterparty located in the Czech Republic, those activities will typically be subject to Czech laws and regulations. The service provider will need to consider whether they are triggering local Czech licensing, registration or notification obligations, as applicable, and also whether they are complying with Czech marketing rules.

Until recently, European laws have not sought to harmonize the approach of member states to non-EEA entities. This has meant that access to the markets of member states has had to be considered on a case-by-case basis. However, the trend in European legislation is now towards harmonizing the approach across all member states to non-EEA entities. On the one hand, this approach is likely to create a barrier to entry to European markets. On the other hand, firms who become compliant with the new EU standards will be able to access the whole EEA market as opposed to having to consider the market on a country-by-country basis.

Under Czech law, offering and provision of financial and investment services or products (collectively “Services”) in the Czech Republic may only be carried out by Czech-licensed entities (such as banks or investment firms), Czech-licensed branches of foreign non-EEA entities, or foreign EEA entities on the basis of the EEA single license, directly or via a Czech branch, as applicable. Czech investment intermediaries, tied agents and insurance intermediaries offering or providing financial or investment Services in the Czech Republic must be registered with the CNB.

Subject to exceptions, financial and investment Services are offered/provided in the Czech Republic in the following cases:

Both the customer and an employee of the entity offering/providing the Services are physically present in the Czech Republic. This also generally applies where an intermediary of such entity, instead of its employee, is present in the Czech Republic.

The offering of the Services by means of distance communication (e.g., over the internet, telephone, mail, email) is aimed at the Czech Republic and the Services may be used in the Czech Republic; the offering of the Services is aimed at the Czech Republic in case the Services are advertised in the Czech Republic with the intention to be provided in the Czech Republic, that is, advertised in Czech communication media over the internet, via directed mail, email, telephone calls, business introducers or intermediaries to customers in the Czech Republic.

However, if the customer independently and proactively contacts the foreign entity by means of distance communication (customer reverse solicitation), the financial and investment Services are not considered provided in the Czech Republic and thus are not subject to Czech laws.

Where foreign investment intermediaries, tied agents or insurance intermediaries engage in offering or providing financial or investment Services in the Czech Republic from outside the Czech Republic, they must be registered with the CNB, unless they provide such Services on an incidental basis only.

Additionally, any advertisement of financial and investment Services to persons in the Czech Republic must comply with the Czech rules on advertising. EEA entities operating in the Czech Republic under the EEA single license may freely advertise financial and investment Services to persons in the Czech Republic as long as they adhere to the applicable Czech rules. However, non-EEA entities operating in the Czech Republic (and EEA entities not complying with the EEA single license requirements) may advertise their financial and investment Services in the Czech Republic without setting up a branch and obtaining a banking license from the CNB only if the advertising does not overlap into provision of financial or investment Services.

Please note that advertising and providing financial and investment Services on web pages where the Czech language is an option may be considered as advertising in the Czech Republic and thus be subject to Czech laws, regardless of where the company or the servers are situated.

As mentioned above, recent EU legislation limits the ability of foreign firms to do business in the Czech Republic, particularly as follows:

The Alternative Investment Fund Managers Directive imposes limitations on non-EEA persons marketing fund interests to persons in the Czech Republic (and other European jurisdictions).

MiFID II results in greater restrictions on non-EEA entities doing business in the Czech Republic.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

In order to become authorized, an applicant must satisfy the CNB that it meets the requirements set forth in the respective pieces of legislation applicable to the different categories of financial and investment services. Under Czech law, providing financial and investment services may be subject to a license, registration or mere notification to the regulatory authority.

These requirements can vary depending on the particular regulated activities that the applicant intends to carry on. Broadly, however, the following conditions will need to be satisfied in the case of corporates:

Location of offices - The registered office must be located in the Czech Republic.

Effective supervision - The CNB will consider whether there are any impediments to supervision of the applicant.

Appropriate financial resources - Applicants must satisfy the CNB that they have adequate financial resources to carry on the relevant regulated activities and prove that the origin of the resources is transparent. The minimum registered capital must be paid up in full.

Appropriate human resources - The executives of the applicant and persons in charge of its supervision must be, among others, trustworthy and sufficiently qualified and skilled. Management and control systems must be in place.

Appropriate technical and organizational resources – The applicant must satisfy the CNB that it has in place appropriate technical and organizational resources to carry on the relevant regulated activities.

Business model - The CNB will examine the applicant’s business model. These may also require submission of other plans and rules applicable to the applicant’s activity.

Transparency of the applicant’s group - The CNB will require that the group to which the applicant pertains be transparent.

In certain cases, the CNB may also request supervisory authorities of other EEA countries to provide opinions with respect to the application.

Generally, individuals seeking to obtain authorization must, among others, meet the following criteria:

Be 18 years old

Have full legal capacity

Be trustworthy

Not be previously declared insolvent

Be appropriately educated, qualified and/or skilled

Be suitable to be granted authorization/registration

Certain authorizations may be granted only to corporates. These include the banking license, the license to provide Services as an investment firm, and the license to carry out business activity as an insurance company. On the other hand, other activities such as investment intermediation or insurance intermediation may be carried out by both corporates and individuals.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

To obtain authorization, an applicant must go through a formal process, which involves the completion of required application forms and the submission of supporting information.

In most cases the CNB will have six months from receipt of a completed application by which to determine whether to approve the application.

The forms that must be completed for submission to the regulator and the supporting information to be attached thereto will depend on the nature of the regulated activities to be conducted.

Generally, the documents that the applicant must submit in addition to the application may include the applicant’s business plan, constitutional documents, financial statements, documents evidencing the origin of its financial resources, list of management personnel and documents relating thereto, proposals of management and control system, and organizational structure. Details about persons/entities who control or exert influence over the firm must also be submitted.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Once authorized in the Czech Republic, a Czech firm can passport its authorization into other EEA member states. This passport is, however, only available to firms established in the Czech Republic and will not be available to Czech branches of non-EEA firms. Passporting permits the provision of cross-border services as well as the establishment of a physical branch location.

# 8. Authors and contact information

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