Global Public M&A Guide - Czech Republic

General Legal Framework

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# 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**2.1 Main legal framework**

The main rules and principles of Czech law relating to public takeover bids can be found in:

Czech Act No. 104/2008 Coll. ("**Czech Takeover Bids Act**")

Czech Act No. 125/2008 Coll. ("**Czech Transformations Act**")

Czech Act No. 90/2012 Coll. ("**Czech Companies Act**")

Czech Act No. 256/2004 Coll. ("**Czech Capital Markets Act**")

The main body of the Czech takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). This directive was aimed at harmonizing the rules on public takeover bids of the different Member States of the European Economic Area (EEA). Be that as it may, the Takeover Directive still allows Member States to take different approaches in connection with some important features of a public takeover bid (such as the percentage of shares that, upon acquisition, triggers a mandatory public takeover bid on the remaining shares of the target company, and the powers of the board of directors). Accordingly, there are still relevant differences in the national rules of the respective Member States of the EEA regarding public takeover bids.

**2.2 Other rules and principles**

While the aforementioned legislation contains the main legal framework for public takeover bids in the Czech Republic, there are a number of additional rules and principles that are to be taken into account when preparing or conducting a public takeover bid, such as:

The rules relating to the disclosure of significant shareholdings in listed companies (the so-called transparency rules). These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

The rules relating to insider dealing and market manipulation (the so-called market abuse rules) under (i) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse ("**Market Abuse Directive**"), which is effective from 3 June 2017, and (ii) Regulation 596/2014 of 16 April 2014 ("**Market Abuse Regulation**"), which is effective from 3 July 2016. The Market Abuse Regulation is directly applicable in the Czech Republic.

The rules relating to the public offer of securities and the admission to trading of these securities on a regulated market. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities. These rules are set out in the directly applicable Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and related EU legislation.

The general rules on the supervision and control of the financial markets.

The rules and regulations regarding merger control. These rules and regulations are not further discussed herein.

**2.3 Supervision and enforcement by the Czech National Bank**

Public takeover bids are subject to the supervision and control of the Czech National Bank ("**CNB**"). The CNB is the principal securities regulator in the Czech Republic.

The CNB has a number of legal tools that it can use to supervise and enforce compliance with the public takeover bid rules, including administrative fines. In addition, criminal penalties could be imposed by the courts in case of non-compliance.

The CNB also has the power to grant (in certain cases) exemptions from the rules that would otherwise apply to a public takeover bid.

**2.4 General principles**

The following general principles apply to public takeovers in the Czech Republic. These rules are based on the Takeover Directive:

all holders of the securities of an offeree company of the same class must be afforded equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid. Where it advises the holders of securities, the board of the offeree company must give its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

false markets must not be created in the securities of the offeree company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

an offeror must only announce a bid after ensuring that it can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

**2.5 Foreign investments restrictions**

Although foreign investments are not directly prohibited in the Czech Republic some restrictions may still apply. So called "significant reporting entities" have an obligation to compile and submit a statement on direct investments in the Czech Republic to the Czech National Bank. This obligation is applicable to a Czech company with a direct foreign investment provided that the amount of the foreign investor's interest in the company's business or the volume of loans granted or received as part of its direct investment in the Czech Republic amounts, at the end of the calendar year, to at least CZK 25,000,000.

On 1 May 2021, Act No. 34/2021 Coll., on the screening of foreign investments ("**FDI Act**") came into effect, drawing on Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the European Union. The FDI Act introduced a complex framework to screen foreign investments in strategic sectors of the Czech economy.

For the purposes of the FDI Act, any person who is not a national of, or does not have its registered office in, an EU Member State, or a person directly or indirectly controlled by such persons, is considered a foreign investor.

A foreign investment means an investment of any kind by a foreign investor to pursue an economic activity in the Czech Republic which enables the foreign investor to effectively control that economic activity.

Effective control of an economic activity is defined as where:

the foreign investor has at least 10% of the voting rights or corresponding control in an entity conducting the economic activity (including the voting rights of persons who are subject to joint management or act in accord with the foreign investor);

the foreign investor or a closely related person is a member of an elected body of an entity conducting the economic activity;

the foreign investor holds the ownership rights to an object through which the economic activity is conducted; or

the foreign investor has another method of control that enables such investor to gain access to information, systems or technologies that are important for the protection of the security of the Czech Republic or for its internal or public order.

The FDI Act requires prior approval by the Ministry of Industry and Trade of the foreign investments into targets engaging in the following activities:

manufacturing, research, development, innovation or supply relating to arms and military equipment;

operation of an element of critical infrastructure, including infrastructure related to energy, water management, food and agriculture, healthcare, transportation, communication and IT systems, financial markets, emergency services or public administration;

administration of an information or a communication system relating to critical information infrastructure, administration of an information system for an essential service, or operation of an essential service; or

manufacturing or development of dual-use items (i.e., items that may be used for both civilian and military purposes) set out in Annex IV of the Council Regulation (EC) No 428/2009, setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items.

For foreign investments into other sectors, the prior approval of the Ministry is not necessary. However, the Ministry may review the transaction retrospectively within five years after completion if it believes that the investment may endanger the security of the Czech Republic or its internal or public order. In this regard, the Act introduces the option of a voluntary consultation with the ministry to confirm whether the foreign investment may endanger security or internal or public order. Such consultation is, however, mandatory if the target company is a license holder for nationwide radio or television broadcasting or a publisher of periodicals with a minimum print run of 100,000 copies per day.

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