

Collection Profile Czech Republic

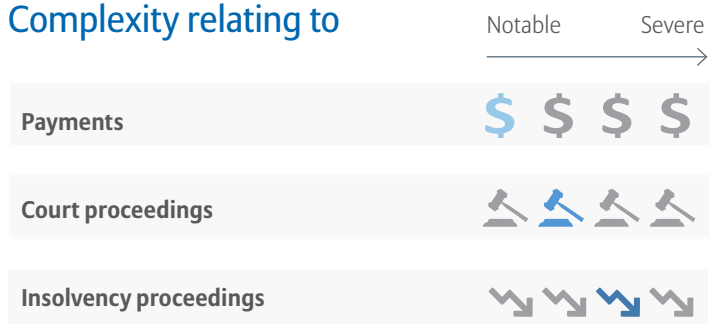
Collecting in Czech Republic

- The payment culture of domestic companies is generally good but when it comes to settling bills some delays can be expected.
- The court system is complex and is criticized for a lack of transparency and independence. In addition, legal proceedings tend to be overly lengthy and costly while enforcing court decisions may also be problematic.
- When the debtor has become insolvent, debt-renegotiation mechanisms are inefficient and liquidation is the default procedure meaning the chances of collecting the debt are extremely poor.

Collection complexity



Complexity relating to



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General information

Availability of financial information

Relevant and reliable financial information ought to be available insofar as companies must be listed in a Trade Register and have an obligation to publish their financial records. In practice though, little data is made available and specialized auditors and providers are essential.

Euler Hermes cross verifies information from multiple sources to allocate each company a grade reflecting its financial health and how it conducts business. EH grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Limited Liability Companies (Společnost S Ručením Omezeným - SRO) are most commonly used for small and medium sized businesses because they may be created by a single shareholder with a minimum capital of CZK 1, and operate with very simplified procedures (no board). Shareholders are only liable for the company's obligations to the extent of their capital contribution.
- Joint-Stock Companies (Akciová Společnost - AS) are usually used for large companies. Capital requirements are higher (from CZK 2,000,000) and a supervisory board must be set up. Shareholders are not liable for the company's obligations.
- Foreign investors alternatively tend to set up branch offices operating as the local representative of a foreign parent company in the country. The branch's activities must be fully listed with the Commercial Register.

Regulatory environment

The court system in Czech Republic divides into a network of District, Regional and High Courts. Regional and District tribunals (krajský soud) have jurisdiction over commercial disputes. In practice, despite attempts to improve speed and efficiency, the legal process remains overly slow (because of a lack of efficient and specialized judges) and obtaining a final decision may require years.

Days Sales Outstanding (DSO): Payments in Czech Republic normally take place within 40 days on average (against payment terms at 30 days).



Getting Paid

Days Sales Outstanding (DSO)

The payment behavior of domestic companies is generally good and payments in Czech Republic normally take place within 40 days on average against payment terms at 30 days.

Late payment interest

The Recast Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days was transposed into Czech law in June 2013 but, by contrast with other EU Member States, payments in business-to-business transactions may be extended beyond 30 days by contract provided that the additional delay is fair and justified, and that payment does not exceed 60 days.

Late payment interest may be claimed from the day following the invoice's due date but interest rates must have been agreed upon as a contractual matter. The law otherwise provides that interests may be calculated on the basis of the 'repo rate' fixed by the National Czech Bank, increased by at least 8 percentage points.

Debt collection costs

In addition, in line with EU regulations, creditors are entitled to receive a flat CZK 1,200 fee to cover collection costs and to claim further compensation for other costs (legal fees, recovery agency fees, etc.). In practice, collection costs are not usually charged to the debtor and tend to be used as negotiation tools.

Payments

The most common payment methods are as follows:

Sepa bank transfers are amongst the most popular payment means as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically.

For export transactions, transfers are usually guaranteed through an Export Credit Insurance policy, which helps minimize the risk of sudden

or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which our clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) constitute reliable guarantees which can be interpreted as a sign of good faith since they can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Also, confirmed Documentary Letters of Credit (a debtor guarantees that a certain amount of money is made available to a beneficiary through a bank once certain terms, specifically agreed by the parties, have been met) may be considered.

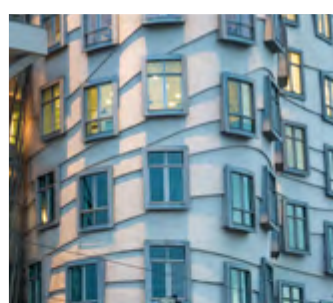
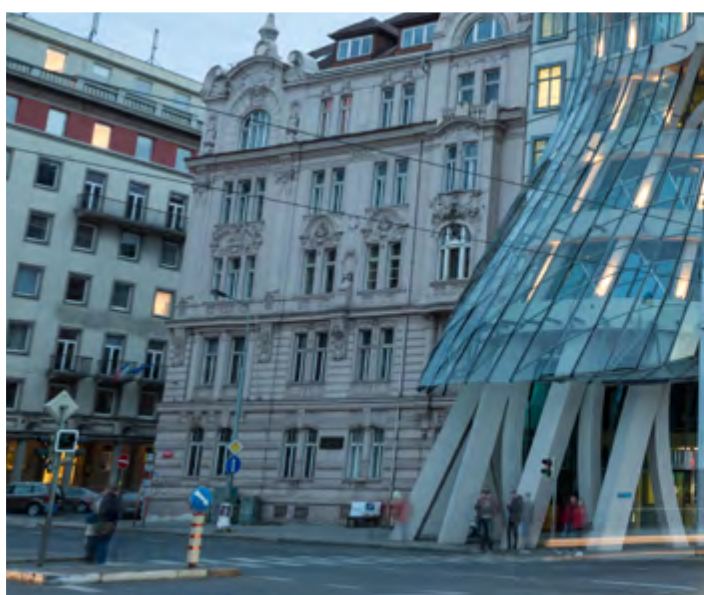
Overall, standard bank guarantees may be obtained fairly efficiently, but negotiation of down payments remains preferable (20% of transactions include such an arrangement on average).

Checks and bills of exchange left unpaid constitute debt recognition tools and may be enforced through the fast-track Payment Order procedure. In addition, domestic companies sometimes provide guarantees through blank bills of exchange or pledge of assets, but these methods are not always efficient due to insufficient assets or liquidity.

Ownership protection

The law entitles a seller to retain ownership over goods until the buyer has paid the related invoice in full, as long as a written agreement has been concluded between the parties. In practice, more sophisticated forms of Retention of Title (RoT) provisions aiming at maintaining ownership despite transformation or selling to third parties would not be recognized and enforcing RoT provisions is a time consuming exercise.

When the parties agree to do so and as long as the applicability conditions listed previously are observed, RoT clauses may be triggered during the pre-legal phase as a means to get the goods back if the debtor is not able to fulfil its obligation to pay. When a disagreement occurs, commencing legal action would be necessary.



Late payment interest:

Late payment interests may be claimed from the day following the invoice's due date but interest rates must have been agreed upon as a contractual matter.



Collecting overdues

Amicable action

Negotiating

Amicable settlement opportunities should always be considered as a strong alternative to formal proceedings and, before starting legal proceedings against a debtor, assessing its solvency and assets is essential as it provides verification as to whether the company is still active and whether recovery chances are good. If insolvency proceedings have been initiated, indeed, it often becomes impossible to enforce a debt (see below) and, in practice, about 60% of insolvency proceedings are closed before they even start because there are no assets to sell.

Overall, achieving an amicable settlement agreement through conciliation, mediation or arbitration remains the most reasonable and efficient option considering that these are enforceable in court.

Legal action

Ordinary proceedings

When the debt is certain and undisputed, it is possible to have fast-track proceedings (platební rozkaz) aiming at obtaining an enforceable Payment Order.

Otherwise, provided that the debtor has been served with a final call for performance (seven days), ordinary legal proceedings may be commenced. The judicial process in Czech Republic essentially focuses on examining the evidence provided by the parties, but it may also include hearings. The courts would then typically grant remedies in the form of compensatory damages, performance orders, or declaratory judgments, but punitive damages do not exist under Czech law.

Having said this, and as already mentioned, it is advisable to avoid having Czech domestic tribunals as the process is generally excessively slow and expensive.

Necessary documents

Copies of invoices, statement of accounts, copies of signed delivery lists, POA, abstract from business register, orders (if available), and contact information (if available).

Time limitations

As a general rule, business claims must be brought to court within three years (one year for transportation agreements) starting from the date where the cause of action arose. Courts however tend to interpret limitation periods flexibly as long as the respondent does not object. Otherwise, the claim cannot be admitted.

Precautionary measures

Precautionary measures could help preserve the creditor's interests pending a final and enforceable judgment. Indeed, the courts may order interim pre-action measures ex parte (without the presence of both parties) to avoid irreparable damage (deposit, order,

preservation of the status quo, protection of rights, etc.), to obtain evidence (hearings, document examinations) or protect evidence (records, seizures).

It is however generally required to demonstrate an emergency situation justifying the granting of such measures. Once ordered, interim measures are usually carried out by the court or by a bailiff.

Lodging an appeal

Decisions issued in first instance by Regional Courts may be brought to appeal before High Courts within fifteen days of delivery. The courts would then decide on failures to abide by procedural requirements, lacks of jurisdiction, errors of law and errors of fact. Further appeal against decisions rendered in second instance is not possible.

Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted). When the debtor fails to satisfy the court decision, enforcement proceedings may take the form of a seizure of assets.

In practice, enforcing judgments is time consuming and usually remains inefficient unless conducted by professional 'executors' under the Execution Code. In fact, an Amendment to the Civil Procedure Code and Execution Code which became effective in January 2013 now gives professional executors exclusive competence to enforce judgments in commercial litigations.

How long could legal action take?

Fast-track proceedings could last up to a year but it is otherwise common for ordinary legal proceedings in Czech Republic to spread over two to three years before the courts render a final and enforceable order. In addition, enforcement may also require several years.

Proceedings involving international parties would not necessarily require more time than those involving domestic parties only, however extra delays should be allowed in order to have all documents translated.

How much could this cost?

As a rule, the winning party may request to have its court fees and legal costs paid (fully or in part) by the defeated party (Decree

Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

177/1996). Fast-track procedures may cost 4% of the amount claimed. Fixed fees (CZK 300) would be paid at each legal step, in addition to court fees representing 5% of the claim in ordinary proceedings. Conditional arrangements whereby attorneys are not paid upfront but rather receive of a fixed sum upon success and contingent fees whereby the legal professionals are entitled to receiving a percentage on the final award are common. Use of third-party litigation funding companies is also common.

Alternatives to legal action

Alternative Dispute Resolution methods (ADR)

ADR is not commonly used in the Czech Republic even though a Mediation Act was introduced in 2012 to reduce the courts' caseload. By law, the courts must now invite the parties to reach a compromise prior to rendering a decision, but the parties cannot be forced to do so. Domestic or international arbitration proceedings, nonetheless, are internationally recognized as a significant means to avoid ordinary proceedings because they provide for confidential settlement opportunities while arbitral awards are final and enforceable.

Foreign forums

Selecting a foreign forum to settle disputes may constitute another efficient alternative to domestic courts. In practice, the Czech Republic is a signatory to the Rome I Regulation, the law applicable to contractual obligations, which stipulates that parties in a contract may, by mutual agreement, choose the law applicable to this contract, and select the court that will have jurisdiction over disputes. Therefore, as long as their agreement has been concluded in writing, foreign traders may agree to solve their business disputes in a foreign forum (i.e. under a foreign law or before a foreign court). In particular, the courts of other EU Member States would be enforceable in Czech Republic (see below).

Enforcing foreign awards

When the parties consider obtaining a decision from a foreign court in order to reduce delays, or when a foreign decision must be enforced in Czech Republic because a debtor has assets in the country, it is first essential to ensure that domestic courts will recognize the decision. As a general rule, indeed, courts must recognize foreign judgments as domestic decisions prior to enforcing them, but specific rules apply. On the one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing a EU judgment in Czech Republic are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001).

If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO, provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at

eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation of the judgment and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, it can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015).

On the other hand, judgments rendered in foreign countries outside the EU would normally be recognized and enforced (as provided under the Private International Law and Procedural Act No. 97/1963 Coll.), provided that they have first been 'recognized' by domestic courts as a domestic judgment. The courts would typically verify whether the foreign award is final and enforceable in the issuing country, but recognition would essentially depend on reciprocity (i.e. the existence of reciprocal recognition and enforcement treaties), which means that Czech courts will not recognize and enforce foreign decisions issued in countries which do not recognize Czech decisions. Once exequatur is granted, the interested party may commence execution proceedings. Foreign judgments must be enforced through court execution rather than executor enforcement (for domestic judgments) and the District Court of the place of residence / registered office of the defendant would have jurisdiction on such matters.

Czech Republic is otherwise a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, meaning that its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings. Therefore, international arbitration could constitute a significant alternative to formal proceedings.



Litigation @ Euler Hermes

Should legal action be necessary Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

Handling insolvent debtors

Insolvency in Czech Republic is a matter of cash flow and balance sheets alike: a debtor is deemed insolvent when he has more than one creditor and overdue debts which it cannot pay for more than 30 days (plurality of creditors and maturity of money receivables). In addition, insolvency may be found when the debtor's assets (taking into account the expected development of the enterprise) cannot compensate the debts.

Czech Republic's Insolvency Act of 2006 (Law n° 182/2006 Coll. as amended) is inspired from U.S. Chapter 11 and strengthens the position of creditors, limits the incentives for prolonged bankruptcy procedures and offers viable businesses the possibility of continuing business activities. Insolvency proceedings may only start once the debtor (or its creditors) has petitioned for its insolvency (insolvenční návrh) and the court's edict confirming the debtor's insolvency status is published in the Insolvencies Register. Three types of insolvency proceedings can then be considered but, following a creditors' meeting, it is for the court to decide on the insolvency resolution method.

Insolvency proceedings

Out-of-Court proceedings

The law provides no specific out-of-court mechanisms.

Restructuring the debt

Reorganization (reorganizace) is a method of resolving insolvency as it aims at preserving the debtor's business. Insolvent debtors (having either at least 50 employees or a turnover of at least CZK 50 million for the last accounting period) may initiate a reorganization process, but debt restructuring proposals must be approved by the majority of secured and unsecured creditors. The directors normally retain the right to manage the business and, in theory, a stay on enforcement proceedings may be obtained with the support of the majority of the creditors.

In practice, the courts are reluctant to approve moratoriums, and debt renegotiation proceedings are not known for being efficient.

Winding up proceedings

Bankruptcy liquidation (konkurs) is the final process by which the claims of creditors are proportionately settled out of the proceeds of the sale of the debtor's estate. After deciding that a company is to be wound up, the court appoints a liquidator in charge of liquidating the company's assets and collecting receivables. Creditors are obliged to register their receivables with the liquidator within 60 days following the publication of the court's edict confirming the debtor's insolvency status, so that they can be satisfied during the liquidation proceedings. The law of 2006 has also created an accelerated liquidation procedure applicable to entities in which turnover does not exceed CZK 2 million, provided that less than fifty creditors are involved, but it is difficult to say whether this procedure is relied upon in practice.

Priority rules

Priority rules normally apply while distributing the proceeds to the creditors. Secured creditors have absolute priority over other creditors and may obtain 100% of the proceeds.

Cancellation of suspect transactions (clawback)

The administrator is normally entitled to review and cancel any suspected legal action deemed detrimental to the creditors conducted by the debtor up to six months prior to the declaration of bankruptcy.

How long could insolvency proceedings take?

Insolvency proceedings would normally take four years on average.

Necessary documents

Copies of invoices, statement of account, POA, signed delivery lists, POA, contact information and orders.



Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.

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