This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

CZECH REPUBLIC

Responses submitted by:
Name: Robert Němec, Dana Fiedlerová, Alžběta Heřmánková
Law Firm/Company: PRK Partners s.r.o., advokátní kancelář
Location: Prague, Czech Republic

1. Would your jurisdiction be described as a common law or civil code jurisdiction?

Civil code jurisdiction.

2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?

An adversarial method of adjudication is generally used in Czech civil proceedings.

Non-contentious proceedings regulated by a new law – Act No. 292/2013 Coll., on special court proceedings – are governed by the so-called principle of 'officiality'; the court, or other relevant authority, therefore determines and defines the subject of the proceedings.

Czech criminal proceedings are also based on adversarial procedural rules. Preliminary proceedings are based on an inquisitorial system (with contradictory elements) and proceedings before the court are based on a continental-accusatorial system.

3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?

A Czech national, who has no criminal record and who has reached 30 years of age, can be appointed a judge provided that his/her experience and qualities provide a guarantee for proper exercise of the function. The judge must also have obtained a university Master's degree (or equivalent) in law and must have passed a special judicial exam. The judge's office expires if a judge (i) reaches 70 years of age, (ii) resigns, (iii) is incompetent to hold the office, (iv) no longer meets the requirements for appointment as judge, or (v) is convicted of a crime.

There are no juries in proceedings before the courts in the Czech Republic. In certain first instance criminal proceedings and certain employment disputes, however, cases are decided by a presiding judge and two lay judges. Lay judges are not lawyers and are elected by city (for district courts) or regional (for regional courts) councils.

A Czech national, who has reached legal age, is legally competent (sui iuris) and has no criminal record, may become an arbitrator. However, consumer disputes may be decided only by an arbitrator registered with the Ministry of Justice.

This document is a resource tool only. The information was compiled in 2014.
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.

CZECH REPUBLIC

4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?

Czech courts are structured and organised by region and function. District courts, located in each of the 86 districts of the Czech Republic, represent the lowest level of judicial decision-making; these are general courts of first instance whose decisions may be appealed to one of eight regional courts (depending on the location of the lower court). At the next tier of the civil court system, two high courts deal with appeals against the judgments issued by regional courts. At the top of the judicial hierarchy is the Supreme Court, which decides on certain specialised matters (such as the recognition of foreign judgments in matrimonial matters), as well as on extraordinary appeals (recourses) against final and enforceable decisions of lower courts. The Constitutional Court, which is an independent body responsible for the protection of constitutionality outside the general court structure, decides on potential or real conflicts between legal regulations, judicial or administrative decisions and acts and the Constitution of the Czech Republic.

Each court usually has its own civil (and commercial) and criminal division. Within each division, there are judges and panels that specialise in certain matters, e.g. employment law, family law, insolvency law, the enforcement of decisions, inheritance, intellectual property or unfair competition.

Administrative matters are adjudicated by regional courts and the Supreme Administrative Court.

5. Is arbitration an option and when? If so, what rules are typically used?

Disputes may be resolved by arbitration in the Czech Republic. Arbitration is governed by Act No. 216/1994 Coll., on arbitral proceedings and enforcement of arbitral awards. Act No. 99/1963 Coll., Civil Procedure Code (the "CPC") is applied subsidiarily.

The parties may agree that any proprietary disputes arising from their relations (excluding enforcement and incidental disputes), which would otherwise fall under the jurisdiction of "ordinary" courts, will be decided by one or more arbitrators in ad hoc arbitration or by a permanent arbitration court (e.g. the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic)

An arbitral award may be subject to review by other arbitrators on the basis of an express agreement of the parties to the dispute. Furthermore, an arbitral award may be challenged before the court by filing an action for the annulment of such award; however, the reasons for which the court may annul an arbitral award are very limited and of a formal nature.

6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?

A binding arbitration agreement (or clause) prevents the parties from submitting their dispute to an "ordinary" court, unless both parties agree that their dispute shall be resolved by an "ordinary" court. According to section 106 of the CPC, the defendant may raise an objection against the court's jurisdiction together with his first pleading before the court. If the court determines that the dispute is subject to a valid arbitration agreement between the parties, it is obliged to terminate the court proceedings, unless both parties expressly declare that they do not insist on the arbitration agreement and proceeding with

the resolution of the dispute in question via arbitration.

7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?

Mediation is permissable in every area of law, except where it is expressly excluded by legislation. Mediation is governed both by Act No. 202/2012 Coll., on mediation (the "Mediation Act"), and, in the area of criminal proceedings, by Act No. 257/2000 Coll., on the Probation and Mediation Service of the Czech Republic. A registered mediator acting in accordance with the Mediation Act must pass a professional exam before a commission appointed by the Ministry of Justice. The Ministry of Justice keeps a list of licenced mediators registered in accordance with the Mediation Act.

According to section 100 of the CPC, the court may, if it considers appropriate, suspend proceedings in a civil case and order the parties to attend at least one 3-hour meeting with a mediator. The proceedings may be suspended for up to 3 months. In case the parties do not agree on a mediator, the court chooses a mediator from the list kept by the Ministry of Justice.

8. What is the process for pre-hearing fact discovery (if any)?

(a) Are there provisions for mandatory document disclosures?

The CPC does not include provisions for mandatory document disclosures. The opposing party is not entitled to access the other party's files and relevant documents. Each party discloses only those documents it finds appropriate.

(b) Is there provision for oral examinations of the parties or others?

No.

(c) Are there limits on the length of oral examinations?

N/A

(d) Are witness statements or summaries to be provided before the hearing?

No.

9. What is the process for pre-hearing expert disclosure (if any)?

(a) Are expert reports or written summaries required to be exchanged?

No.

CZECH REPUBLIC

(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?

No.

(c) Are there provisions requiring experts to meet and narrow issues before the hearing?

No.

10. Are there other notable discovery rules?

Under sections 78 (1) and 102 (2) of the CPC, evidence may be secured both prior to the trial or during the trial itself if there is a potential risk that such evidence might not be later obtainable at all or only with great difficulty. At the pre-trial stage, evidence may be secured only upon a motion of a party.

Under section 129 (2) of the CPC, the court has the right to order any person to submit a specific document that constitutes important evidence for the proceedings.

11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?

The CPC regulates a concept similar to a prehearing conference – the so-called "preliminary hearing". According to section 114c of the CPC, if the court considers it appropriate, it will direct the parties to attend such preliminary hearing. The preliminary hearing may contribute towards the settlement of the dispute and the court will also inform the parties about the conditions of the hearing and the necessity or desirability of any amendments to the pleadings. The court may also impose other procedural obligations and order the parties to attend a meeting with a mediator.

The court may, in accordance with section 114c (6) of the CPC, issue a judgment by default (in Czech: "rozsudek pro zmeškání") if the defendant misses the preliminary hearing without a sufficient reason. In the event the plaintiff misses the preliminary hearing without a sufficient reason, the court will terminate the proceedings (section 114c (7) of the CPC).

12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?

Under Czech law, certain judgments may be issued by a court for one party and against another party summarily, i.e. without a full trial. These are the default judgment and the recognition judgment (more information in answers to questions 11 and 24, respectively).

At its own discretion, the court may choose to decide a case in "summary proceedings", i.e. it may decide to issue an order

for payment in accordance with section 172 of the CPC. This procedure is usually used in less complicated disputes over monetary performance under the condition that such dispute is considered sufficiently proven by the evidence submitted. Nevertheless, complex cases where the court issues a payment order are no exception. The defendant may file objections against the order within 15 days of its delivery. Such objections will cancel the order and the summary proceedings will be converted into a standard court trial.

The plaintiff may also apply for an electronic order for payment. Under section 174a of the CPC, the application is to be made though a special electronic form signed by the plaintiff's electronic signature. Such pecuniary claim may not be higher than CZK 1,000,000.

The CPC also sets down some specific rules for the European order for payment procedure (under Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure) and payment orders where a bill of exchange or check have been issued (sections 174b and 175 of the CPC).

13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?

There is no such process. According to section 125 of the CPC, all means by which the merits of a case can be ascertained may be used as evidence. A demonstrative list of forms of evidence is contained in this section of the CPC. This list includes the most common forms of evidence, such as witness questioning, expert opinions, reports and statements of public authorities or any natural person or legal entity, notarial or executor deeds and any other documents, site inspections and questioning of the parties.

14. What is the standard for admissibility of expert evidence?

If the decision depends on a consideration of facts requiring an expert opinion, the court will appoint an expert witness. Usually, the expert witness produces a written expert opinion and is then later questioned at the hearing – the parties may also question the expert during the hearing. In some cases only a written expert opinion may be sufficient. According to section 127 (2) of the CPC, such written expert opinion may be reviewed and revised by another expert witness (e.g. if suspicion about its correctness arises). Any party may appoint its own expert; such expert has the right to study the court file and his written expert opinion will have the same evidentiary value as a written expert opinion prepared by an expert witness appointed by the court.

15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?

Please see the answer to question number 14. Experts are generally primarily appointed by the court.

CZECH REPUBLIC

16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?

With regard to the fact that Czech law does not recognize any concept similar to mandatory document disclosures, there is no need for special rules protecting privileged documents.

More information can be found in the answer to question 17 below.

17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?

Some classified information may not be disclosed in court proceedings, e.g. Act No. 412/2005 Coll., on the protection of classified information and on security capacity, specifies that some confidential information important for the interests of the Czech Republic cannot be disclosed to unauthorized persons. There are also other statutory confidentiality commitments obliging attorneys, notaries, judges or doctors not to disclose specified private information. The duty of non-disclosure may, in some cases, be overridden by a waiver of confidentiality.

18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?

The relevant court determines such disputes.

19. Briefly describe the trial process?

(a) Are there opening submissions, in what form and of what length?

The hearing begins with a presentation of the parties' claims. The parties may present their claim orally or refer to a written statement (which is more common). The CPC does not regulate the length of the submission.

(b) What is the order of presentation of witnesses?

The order of presentation of witnesses is not specified in the CPC.

(c) Who conducts examination and in what order?

Each person, who is not a party of proceedings, is obliged to appear before the court if s/he is summoned and to testify as a witness. A witness may refuse to testify, if his / her testimony would lead to a possibility of criminal proceedings being

initiated against him / her or persons related to him/her. The court informs the witness about his / her rights and obligations and criminal consequences of perjury. The witness first describes in an uninterrupted manner what s/he knows of the subject of examination. After that, the other participants are allowed to ask him / her questions, in the following order: (i) the presiding judge, (ii) other judges of the senate, (iii) the parties to the proceedings (including their legal representatives), and (iv) the expert witness. The presiding judge may decide not to admit certain questions, e.g. leading questions.

Both the claimant and the defendant may also be questioned as witnesses although this is not very common; the court only orders the examination of a party if the fact to be proven cannot be proven by any other means.

(d) What is the process for closing submissions?

Closing submissions are regulated by section 119a (2) of the CPC, however, there are no special provisions. This section only states that the court calls on the parties to summarize their claims and express their opinion on the evidence presented and questions of law. It is possible to both present the closing submission orally and to submit a written closing submission.

20. Please identify any other notable trial procedures.

We are not aware of any other notable trial procedures.

21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?

Each party has to prove its own allegations (section 120 (1) of the CPC). This means that in a case involving a claim for damages, the plaintiff usually has to prove the following: (i) a breach of a statutory or contractual duty by the defendant, (ii) the occurrence of damage, (iii) a causal link (causation) between the breach and the occurrence of damage, and (iv) fault (either negligence or intent). Some exceptions however apply.

Liability for damage is regulated by Act No. 40/1964, the Civil Code (the "**Old Civil Code**"), Act No. 513/1991 Coll., the Commercial Code (the "**Commercial Code**") and Act No. 89/2012, the Civil Code (the "**New Civil Code**"). Specific rules concerning liability for damage are contained in Act 262/2006 Coll., the Labour Code, or Act No. 82/1998 Coll., on liability for damage caused in the course of the exercise of public powers through a decision or incorrect administrative procedure, and certain other acts.

Section 420 (1) of the Old Civil Code regulates general liability for damage. To give rise to general liability for damage, the following conditions must be fulfilled: (i) a breach of a legal duty, (ii) the occurrence of damage, (iii) a causal link between (i) and (ii), and (iv) fault. The first three prerequisites must be proven, and. are to be proven by the plaintiff. Fault is required at least in the form of unintentional negligence and is presumed as such. The burden of proof in this respect (i.e. to disprove unintentional negligence) therefore lies on the defendant. On the contrary, intent must be proven by the plaintiff. The Old Civil Code also regulates certain cases of special liability for damage, e.g. some strict liability cases (without fault).

CZECH REPUBLIC

The Commercial Code (sections 373 et seq.) stipulates that the following prerequisites must be met for liability for damage to be established: (i) a breach of a duty, (ii) the occurrence of damage, and (iii) a causal link (causation) between the breach and the occurrence of damage. Liability under the Commercial Code is strict liability. The defendant therefore has to prove that his liability is excluded by circumstances excluding liability within the meaning of section 374 of the Commercial Code.

According to section 2910 of the New Civil Code, liability for damage caused by a breach of a statutory duty is fault-based (section 2911 of the New Civil Code states that negligence is presumed), unlike liability for damage caused by a breach of a contractual duty (section 2913 of the New Civil Code) where fault is not taken into account – the defendant has to prove that his liability is excluded by circumstances excluding liability, e.g. self-defence or necessity. The New Civil Code regulates some cases of special liability for damage.

Czech civil procedural law is based on the principle of free evaluation of evidence by the court.

22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?

Generally, under Czech law, both under the new and old Civil Codes and the Commercial Code, there are two categories of damage, namely: (i) actual damage (damnum emergens) and (ii) loss of profit (lucrum cessans). Actual damage consists of a decrease in the value of the injured party's assets and is quantified as the value of the investment that would be required to return the injured party to the position s/he was in prior to occurrence of such damage. Loss of profit is considered an economic detriment where the injured party is not able to increase its assets as a result of the breach even though such an increase could have been realized under normal circumstances (i.e. if the breach would not have occurred). Both of these forms are independent of each other.

Under the New Civil Code, property damage is to be primarily compensated by restoring the property to its original state. Monetary compensation is awarded only where restoration of the original state is not possible, or upon the injured party's request (section 2951 (1) of the New Civil Code). Both actual damage and loss of profit may be compensated.

In accordance with section 2951 (2) of the New Civil Code, non-property damage is compensated by providing an adequate non-monetary satisfaction. Such satisfaction may be provided in monetary form if a different method of compensation fails to provide sufficient and effective redress of the harm caused.

23. If punitive damages are available, what is the threshold for recovery, and range of awards?

Punitive and exemplary damages are unknown to the Czech legal system, however a concept similar to punitive damages is regulated by section 2969 (2) of the New Civil Code. Generally, when ascertaining damage, the actual value of the property and financial means necessary to return the property to its original state are used. In case of wanton or malicious destruction

or damage to someone's property, the wrongdoer pays to the injured party a so-called "pretium affectionis" (factitious value placed upon a thing due to the owner's sentimental association with or affection for it).

24. Are there time limits for bringing claims? Responding to claims? Please describe.

The right to bring an action is a procedural law right and it is, therefore, not subject to the statute of limitations. However, the claim itself (e.g. a property right) is subject to substantive law and can be statute barred. The court examines the issue of limitation only if the defendant pleads limitation.

The applicable limitation period depends upon the nature of the claim. Limitation periods are mainly regulated by the Old Civil Code, the Commercial Code and the New Civil Code. The general limitation period under the Old Civil Code is three years. This period commences at the moment when the right could have been first enforced before the court. The common limitation period under the Commercial Code is four years. On 1 January 2014, the existing civil law enactment (including the Old Civil Code and the Commercial Code) was replaced by the New Civil Code. Rights and obligations which come into existence after the New Civil Code came into effect (i.e. after 1 January 2014) are regulated by the New Civil Code. On the contrary, legal relationships (excluding legal relationships concerning personal law, family law and rights in rem) originating before the New Civil Code came into force, as well as the rights and obligations resulting from these legal relationships, are generally regulated by the previous legal rules. The general limitation period under the New Civil Code is three years.

The courts will call upon the defendant to submit his defence within a certain period (according to section 114a of the CPC this period is set by the court and must be at least 30 days). A failure to provide a defence may result in a judgment of recognition (in Czech: "rozsudek pro uznání"). Similarly, the court may, in accordance with section 153b of the CPC, issue a judgment by default (in Czech: "rozsudek pro zmeškání"), in case the defendant misses the first court hearing without a sufficient reason.

25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?

The jurisdiction of Czech courts is governed by Act No. 91/2012 Coll., on private international law. Rules of local jurisdiction are governed by sections 84 to 89 of the CPC. General jurisdiction is based on the following criteria:

i. The defendant's place of residence/domicile (seat or place of business);
ii. The place of the defendant's stay;
iii. The defendant's last known place of stay;
iv. The place where the defendant has his property, if no court can be established according to the preceding criteria; and
v. The location of an enterprise or an organisational component (branch) of the defendant.

CZECH REPUBLIC

In addition to courts of general jurisdiction, a plaintiff may lodge an action with a court of his own choice (alternative jurisdiction) under the following criteria:

i. The place of the defendant's permanent workplace;
ii. The place where the incident that caused the damage occurred;
iii. The place of the defendant's organisational unit (branch), if the dispute relates to this component;
iv. In matters concerning bills of exchange or any other securities, the place of payment; and
v. The place (seat) of a stock exchange if the dispute relates to an exchange business.

Exclusive jurisdiction is established for proceedings concerning real estate and associated rights (these are referred to a court in the district where the real property is located) and as well as for inheritance, bankruptcy, and status proceedings.

According to section 89a of the CPC, prorogation of jurisdiction is possible in disputes between entrepreneurs regarding their business activities, except where exclusive jurisdiction applies.

A procedural defence challenging the jurisdiction of a court may argue that the Czech courts have no jurisdiction to deal with the matter, that the court does not have local jurisdiction, that the court does not have a functional jurisdiction (typically if the regional court is hearing the case instead of the district court) or that the dispute is subject to a valid arbitration agreement.

26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.

Section 93 of the CPC provides that another person may participate in the proceedings (as the so-called "enjoined party" to a case) either on the basis of his own motion or upon a motion of a defendant or a plaintiff in the proceedings; however the consent of such person is required. Procedures for a defendant to bring other potentially responsible parties into the proceedings are thus very limited and dependent on their consent.

Moreover, according to section 92 (1) of the CPC, the plaintiff may submit a petition asking the court to permit another participant to enter the proceedings (either as a defendant or a plaintiff). Consent of the new participant is required only if the newly added person would be participating as a plaintiff. According to section 92 (2) of the CPC, the plaintiff may also file a petition to replace a participant in the proceedings. In the event of the replacement of the plaintiff, the relevant consent of the new plaintiff must be obtained.

27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).

The duty to recover costs is usually decided on at the final hearing (after the judgment is given). The court is obliged to decide on the costs even without the parties' motion. Reimbursable costs include (i) court fees, (ii) lawyer's fees (including VAT), and (iii) other reasonable costs of the parties involved (such as travel costs).

CZECH REPUBLIC

The court fee for monetary claims is generally 5% of the claimed amount (or 4% of the claimed amount if the claim is filed via a special electronic form signed by a recognized electronic signature).

The reimbursement of a legal representative's costs is typically decided on the basis of a special decree (however, in practice, an attorney's fee is usually determined by an agreement between the attorney and the client). Czech courts decide on recoverable costs on the basis of Decree Number 177/1996 Coll., determining fees of attorneys and notaries for providing legal services (the "**Attorney's Tariff**"). The Attorney's Tariff stipulates a fee for each act of legal service (such as preparation for representation, preparation of a claim, attendance of a hearing, preparation of appeal) also with reference to the monetary value of the dispute. The amount of the lawyer's fees, therefore, depends on the monetary value of the claim and the complexity of the proceedings. The Attorney's Tariff also determines an attorney's cash expenses, including postage, telephone charges and reimbursement for loss of time.

Under Czech law, there is a general rule that the party who loses the case bears all of the costs of the proceedings, i.e. its own costs as well as the costs of the successful counterparty. If a party wins the case only partially, the party could (i) bear the costs with the unsuccessful party proportionately, (ii) no party would be entitled to reimbursement, or (iii) the party could be awarded full recovery of its costs (if it was unsuccessful only in a minor part of the claim). In exceptional cases, the recovery of costs would not be awarded to any of the parties due to special reasons and circumstances, such as the poor economic and social status of the unsuccessful party.

28. Are contingency fees allowed?

Contingency fees are generally allowed. Article 10(5) of the Resolution of the Board of the Czech Bar Association No. 7/2004 of the Official Journal, which contains the Rules of Professional Conduct and the Rules of Competition of Lawyers of the Czech Republic (Code of Conduct), stipulates that a lawyer is authorised to negotiate a contractual fee determined by a share of the value of the claim or by the result of the proceedings, unless the fee is disproportionate to the value of the claim. A contractually agreed fee is considered to be disproportionate if it is higher than 25% of the value of the claim.

29. Is third party funding of claims permitted? Under what circumstances?

Third party funding of claims is not explicitly regulated as it is almost unknown in Czech legal system. As a lawsuit can be a very expensive way of pursuing a claim, Czech law provides the following instruments to encourage parties to pursue their claims and to ensure equal access to justice.

In the case of a poor social and economic status of the claimant (both natural and legal persons), the court may release the party from paying the court fee. Some proceedings and some specific claimants are released from the payment of the court fee, e.g. enforcement proceedings, damages claims in the event the damage was incurred in the course of the exercise of public powers through a decision or incorrect administrative procedure or damages claims arising from a work accident.

The party which qualifies for being released from paying the court fee may also ask the court for free legal assistance (section 138 (3) of the CPC). The fee of the legal representative is paid by the state in such a case.

CZECH REPUBLIC

The assignment of a claim is generally also a possible solution, although some exceptions apply. These include, for example, an agreement of the parties prohibiting the assignment of the receivable or section 1881 of the New Civil Code (section 525 of the Old Civil Code) that prohibits the assignment of personal rights closely connected with the claimant (rights that cease to exist upon the claimant's death), such as a claim for financial satisfaction or an alimony claim.

30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?

Multi-party actions are widely discussed in the Czech Republic, however, required legislation is still missing.

31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?

According to Act No. 634/1992 Coll., on consumer protection, a consumer association may commence civil proceedings by an action to refrain from unlawful acts regarding consumer protection. Some representative organizations may represent their member in civil proceedings, e.g. trade unions or associations against discrimination (section 26 of the CPC).

32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?

It takes on average more than a year to obtain a final decision in civil proceedings, whereas in criminal cases it takes about 6 months on average. The time needed depends especially on the complexity of the case and on whether or not the counterparty appeals the first instance decision. Some courts are less efficient than others (particularly because of the insufficient number of judges). All in all, proceedings can last from a few months to a few years.

33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?

Appeal against a first instance decision is usually available although certain exceptions exist (e.g. it is not possible to appeal a decision regarding a financial claim lower than CZK 10,000 (approx. EUR 365)). The appeal is heard and decided by a second instance court; therefore, if a decision was issued by a district court, the corresponding regional court hears the appeal, and the high court in turn decides appeals against the decisions of the regional courts (in certain specific cases a regional court may act as the court of first instance, e.g. disputes concerning intellectual property rights or unfair competition). An appeal must be filed with the court of first instance within 15 days of the service of the respective judgment. After taking certain steps set down by law, the court of first instance transfers the appeal to the appellate court. The appeal has a suspensive effect, the contested judgment will therefore not become final and effective until a decision of

the appellate court becomes enforceable. Appeals are decided by a senate consisting of three judges; these judges are appointed by the Minister of Justice after at least 8 years of legal practice.

Some final judgments of appellate courts may be contested by an extraordinary appeal; one of the conditions for such extraordinary appeal to be admissible is that the financial claim in the case exceeds CZK 50,000 (approx. EUR 1,850). An extraordinary appeal must be filed within 2 months of the service of the appellate court's decision. When lodging an extraordinary appeal, the appellant must be represented by an attorney or, in certain cases where applicable legislation allows it, a notary.

Extraordinary appeal generally does not have a suspensive effect (i.e. the enforceability of the contested decision is not suspended), however, in some cases, enforceability may be suspended by the court hearing the extraordinary appeal. Extraordinary appeals are decided by the Supreme Court, specifically by a senate comprising three judges. The Supreme Court's judges are appointed by the Minister of Justice after at least 10 years of legal practice.

34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?

Some modern hearing rooms are equipped with computer monitors, TV screens or sound recording devices with voice transcription software. On the other hand, some court proceedings are still recorded and later transcribed by a court reporter.

35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?

The use of graphics, computer animation or power point in trials is not very common yet.

36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?

Usually the attorney at law at trial will be the same as the one responsible for pre-trial procedures.

There is no distinction between barristers and solicitors in the Czech Republic. All registered attorneys at law may practise within all areas of law and represent clients before the court. A lawyer is any person who has completed legal education at a law faculty and obtained a Master's degree (or equivalent) in law. An attorney at law must be registered in the Register of Lawyers of the Czech Bar Association. Registration requires that certain further conditions are fulfilled; these conditions are set out in Act No. 85/1996 Coll., on the legal profession, and include for example a three-year law practice as a trainee lawyer, the successful passing of the Bar exam, no record of criminal convictions, no disciplinary punishment consisting of the termination of his membership in the Bar etc. With some exceptions, an attorney at law may not be in any employment or service relationship.

CZECH REPUBLIC

37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?

Contributory negligence is regulated in section 441 of the Old Civil Code. This provision specifically provides for the participation of the aggrieved party in the harm. In case the damage was also caused by the aggrieved party's fault, the aggrieved party will be liable proportionately. If the damage is caused solely by the aggrieved party's fault, the aggrieved party will be solely liable.

Contributory negligence is also governed by section 2918 of the New Civil Code. According to this provision, in the event the damage was also caused by the aggrieved party's fault, the wrongdoer's liability is reduced proportionately. If one of the parties contributed to the harm through their own negligence only insignificantly, the liability will not be divided proportionately between the parties.

38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?

The Czech Republic is a signatory of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and many bilateral international treaties on mutual legal assistance which also govern the service of documents. Since the Czech Republic is a member of the European Union, Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters also applies. Service of documents is therefore regulated by these sources of law. In case the documents shall be served to a state which is not a member of the European Union, and which is not a signatory of the Hague Convention or bilateral treaty on mutual legal assistance, sections 104 et seq. of Act No. 91/2012 Coll., on international private law, will be applied.

39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)

No, there is generally no provision prohibiting the export of relevant documents outside the Czech jurisdiction, however, as mentioned in answer to question 17 above, some classified information (confidential information important for the Czech Republic's interests) may not be disclosed in court proceedings.

40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.

Within the civil court proceedings, any party to a dispute may file a petition for a preliminary injunction. There are two ways

to obtain a preliminary injunction – the claimant may ask for the order either before commencing civil proceedings (section 74 et seq. of the CPC) or after the proceedings have commenced (section 102 of the CPC). A special preliminary injunction in cases involving domestic violence or minors is regulated by Act No. 292/2013 Coll., on special court proceedings.

The claimant must prove that it is necessary to regulate the parties' relationships in the interim, or that there is a concern that the enforcement of a court decision might be in jeopardy. The grant of a preliminary injunction is subject to the payment of a security. The security, which is required for all preliminary injunctions in civil disputes, amounts to CZK 10,000 (approximately EUR 370) and in disputes between entrepreneurs and relating to their business the security amounts to CZK 50,000 (approx. 1,850). Courts have been given the opportunity to request the payment of additional security if there is a risk that the preliminary injunction could cause substantial damage to the affected party; applicable legislation does not limit the amount of the additional security.

The claimant bears the risk of liability for damages caused by the injunction if later found to be wrongly granted. The security will be returned to the claimant, in case no damage is caused. The court will also return the security when the application for a preliminary injunction has been dismissed or rejected.

In the request for a preliminary injunction, the claimant may ask the court, inter alia, to freeze the defendant's property, to order the defendant to deposit a sum of money with the court (however, Czech courts generally decide that such order is possible only upon the issuance of a judgment and some courts have ruled that it is not possible to order the defendant to deposit a sum of money with the court at all), or to refrain from disposing of certain property or rights. A preliminary injunction may also impose a duty on a person other than the defendant, but only if certain conditions are met.

If the court grants the injunction, the order will be issued within 7 days of the filing of the request. In case the order is issued before civil proceedings are commenced, the court calls upon the applicant to file an action against the defendant within a certain time period. If the applicant fails to do so, the preliminary injunction ceases to exist.

41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?

Generally, both parties to the proceedings have an equal status and each party bears the burden of proof in relation to the facts alleged by it.

42. Are there legislative efforts under way that address any of the litigation practices in your country?

The existing civil law enactment (the Old Civil Code, the Commercial Code and Act No. 97/1963 Coll., on international private and procedural law) was replaced by the New Civil Code, Act No. 90/2012 Coll., on business corporations, and Act No. 91/2012 Coll., on international private law, on 1 January 2014. The CPC has been amended to correspond with the new legal environment and to adapt to the changes. Furthermore, from 1 January 2014, non-contentious proceedings are

regulated by a new law – Act No. 292/2013 Coll., on special court proceedings. Moreover, it is currently being discussed that the CPC, which came into force on 1 April 1964, will be replaced by entirely new legislation.