

## **91/2012 Coll.**

### **THE ACT**

dated 25<sup>th</sup> January 2012

#### **governing private international law**

Parliament has adopted the following law of the Czech Republic:

### **PART ONE**

#### **GENERAL PROVISIONS**

##### **Section 1**

###### **The subject of regulation**

This Act regulates the following relations with an international element:

- a) the applicable body of laws pertaining to private law relations, including the use of regulations other than the designated applicable law,
- b) the legal standing of foreigners and international legal entities in private law relations,
- c) the jurisdiction and procedures of the courts and other bodies when regulating the relations set out in letters a) and b) and deciding on them, including the procedures for hearings, provided the given hearing includes an international element,
- d) the recognition and enforcement of foreign judgements,
- e) legal assistance during contact with foreign countries,
- f) certain matters concerning bankruptcy,
- g) some matters concerning arbitration proceedings, including the recognition and enforcement of foreign judgements.

##### **Section 2**

###### **International treaties and European Union regulations**

This Act shall be applied within the boundaries of the provisions of certain published international treaties which are binding on the Czech Republic (hereafter simply referred to as "international treaties") and of any directly applicable provisions of European Union law 1).

##### **Section 3**

###### **Compulsorily applicable provisions of legal regulations**

The provisions of this Act do not prevent the use of those provisions of Czech law which must always be used within the bounds of the regulation of their given subject areas regardless of which body of laws the legal relations, in which the effects of the use of any such provisions are manifest, are subject to.

##### **Section 4**

###### **The stipulation of public order**

The provisions of any foreign body of laws which are supposed to be used in accordance with the provisions of this Act cannot be applied, if the effects of any such application would clearly contravene public order. Likewise, it is also not possible to recognise any foreign judgements, foreign court settlements, foreign notary or other public documents or foreign arbitration judgements or to implement any procedural acts requested from abroad or to recognise any legal relations or any facts which have arisen abroad or according to a foreign body of laws on the same grounds.

##### **Section 5**

###### **Circumventing the law**

No account will be taken of any created facts or any ostensibly intentional actions undertaken with the aim of ensuring that the provisions of this Act, from which no deviation on the part of the parties is permissible, are not applied or are applied in a different way than would have been the case, if no such created or ostensible facts had existed.

### **PART TWO**

#### **GENERAL PROVISIONS PERTAINING TO PROCEDURAL INTERNATIONAL LAW**

##### **CHAPTER I**

##### **JURISDICTION**

##### **Section 6**

###### **The jurisdiction of the Czech courts**

(1) The jurisdiction of the Czech courts is given, if a court located within the territory of the Czech Republic has local jurisdiction over the proceedings according to the procedural regulations, unless stated otherwise in the provisions of this Act or any other legal regulation.

(2) If the Czech courts have jurisdiction with regard to a given matter, said jurisdiction will also apply to any mutual motions arising from the legal relations in question or from the same factual circumstances.

## Section 7

### **Exemptions from the jurisdiction of the Czech courts**

(1) Foreign states are exempt from the jurisdiction of the Czech courts in the case of proceedings based on their actions and acts undertaken when exercising their state, governmental and other public jurisdictions and functions. This exemption also applies to any of their property which has been used or designated for any such actions.

(2) The exemption to the jurisdiction of the Czech courts does not apply to any other actions, acts or cases in which it is possible to exercise rights against a foreign state in the courts of another state in accordance with general international law.

(3) The Czech courts shall not have jurisdiction over individuals, international organisations and institutions which enjoy immunity in the Czech Republic in accordance with international treaties, general international law or Czech legal regulations. This exemption applies to the extent set out in the aforementioned sources of the immunity.

(4) The provisions of subsections 1 and 3 also apply to the delivery of written materials, the summoning of witnesses, the enforcement of judgements or any other procedural acts.

(5) Deliveries to foreign states, international organisations and institutions and to individuals enjoying the protection of immunity in cases where they are not exempt from the jurisdiction of the Czech courts will be mediated by the Ministry of Foreign Affairs. It is not possible to make deliveries in this manner, the court shall appoint a guardian.

(6) The provisions of subsections 1 to 5 are also to be used appropriately by any other Czech public bodies when deciding on any of the matters regulated by this Act.

## CHAPTER II

### PROVISIONS PERTAINING TO PROCEEDINGS

## Section 8

### **The basic provisions**

(1) The Czech courts will undertake any proceedings in accordance with Czech procedural regulations and the parties will be of equal standing when exercising their rights.

(2) Proceedings commenced in a different state will not prevent the commencement of proceedings pertaining to the same matter between the same participants in a Czech court. If the proceedings in the Czech court commence later than the proceedings held in another state, the Czech court may suspend its proceedings in justified cases, if it can be expected that the foreign body's judgement will be recognised in the Czech Republic.

### **The status of foreigners and foreign entities in proceedings**

## Section 9

(1) The capacity of a foreigner to become a participant in proceedings and his or her procedural capacity is subject to the law of the state in which the foreigner is usually resident. It is sufficient, however, if the foreigner enjoys the given capacity upon the basis of Czech law.

(2) The capacity of foreign entities other than natural persons to become participants in proceedings and their procedural capacity is subject to the body of laws according to which said entity has been established. It is sufficient, however, if said entity's capacity is based on Czech law.

## Section 10

Foreigners and international legal entities are entitled to exemptions from court fees and advances and to the provision of free counsel to protect their interests under the same conditions which apply to citizens of the Czech Republic and Czech legal entities, provided that reciprocity is guaranteed. The condition pertaining to the reciprocity guarantee does not apply to citizens of European Union member states or to citizens of the states which constitute the European Economic Area.

## Section 11

(1) The court may require a foreigner who has his or her usual place of residence abroad or an international legal entity which is seeking a judgement on property rights to deposit security in order to cover any court costs on the basis of a proposal from the defendant. Should this security not be deposited, the court will not continue in the proceedings against the will of the defendant and will suspend the proceedings. The plaintiff must be informed of this.

(2) The provision of the security cannot be imposed, if

a) the proposal for it to be deposited was submitted at a time when the defendant was already acting in the matter or undertaking a procedural act, despite the fact that the defendant already knew that the plaintiff was not a citizen of the Czech Republic or a Czech legal entity or that the plaintiff had lost his or her Czech citizenship or ceased to be a Czech legal entity or that the plaintiff's usual place of residence was not in the Czech Republic,

b) the security is not required from a citizen of the Czech Republic or a Czech legal entity under similar circumstances in the state where the plaintiff is a citizen,

c) the plaintiff owns real estate in the Czech Republic at a price which is sufficient to cover any costs which may arise for the defendant during the proceedings,

d) the proposal to commence the proceedings includes a judicial payment order, or

e) the plaintiff is exempt from court costs and advances.

(3) The obligation to deposit the security cannot be imposed upon the citizens of European Union member states or on the citizens of any of the states which constitute the European Economic Area.

### **Foreign public instruments**

## Section 12

(1) An instrument issued by a court, a notary public or an authority abroad which is valid as a public instrument in the place where it was issued or a public instrument issued by a diplomatic representative or a consular official active in the Czech Republic will also have the evidential authority of a public instrument in the Czech Republic, if it includes the prescribed authentication.

(2) If an instrument issued abroad cannot be provided with the prescribed authentication in accordance with international conventions and the appropriate foreign mission of the Czech Republic is in no doubt as to its authenticity, the foreign mission will provide the instrument with a clause stating that the foreign mission is in no doubt as to the authenticity of the instrument in question.

#### **Ascertaining reciprocity**

##### Section 13

The Ministry of Justice will provide the court with advice pertaining to the reciprocity provided by a foreign state at the request of the court.

### **CHAPTER III**

#### **THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS**

##### Section 14

The judgements of the courts of a foreign state and the rulings of the authorities of a foreign state concerning any rights and obligations, whose private law nature would mean that they were subject to the jurisdiction of the courts in the Czech Republic, as well as foreign judicial settlements and foreign notary or other instruments concerning these matters (hereafter simply referred to as "foreign judgements") will be effective in the Czech Republic, if they have come into legal force according to the confirmation of the appropriate foreign authority and if they have been recognised by the Czech public authorities.

##### Section 15

(1) Unless otherwise stated in the further provisions of this Act, it is not possible to recognise a final and conclusive foreign judgement, if

a) the matter falls under the exclusive jurisdiction of the Czech courts or if the proceedings could not have been undertaken by an authority in a foreign state, if the provisions pertaining to the jurisdiction of the Czech courts had been applied when assessing the jurisdiction of the foreign authority, unless the participant in the proceedings, against whom the judgement is made, has voluntarily submitted to the jurisdiction of the foreign authority,

b) if proceedings are underway before a Czech court with regard to the same legal relations and if said proceedings commenced prior to the proceedings abroad, in which the judgement whose recognition has been proposed was issued,

c) if a Czech court has already issued a valid judgement about the same legal relations or if the valid judgement of the body of a third state has already been recognised in the Czech Republic,

d) if a participant in the proceedings, with regard to whom the judgement is to be recognised, has been deprived of the ability to duly participate in the proceedings by means of a procedure adopted by a foreign authority, especially if said participant has not been delivered a summons or the motion to commence the proceedings,

e) any such recognition would clearly contravene public order, or

f) reciprocity has not been guaranteed; reciprocity is not required if the foreign judgement is not aimed at a citizen of the Czech Republic or a Czech legal entity.

(2) The impediment set out in subsection 1, letter d) is only taken into account, if the participant in the proceedings against whom the foreign judgement should be recognised so requests. This also applies in the case of the impediments set out in subsection 1, letters b) and c), unless the body deciding on the recognition is otherwise aware of their existence.

##### Section 16

(1) The recognition of a foreign judgement in property matters is not announced by means of a special statement. The foreign judgement is recognised by means of the fact that a body of a Czech public authority takes it into consideration, as if it were a judgement of a Czech public authority body. If objections are raised to this on the grounds of preserving public order or on any other grounds for withholding recognition, which could not have been taken into account without any further proceedings, the proceedings will be suspended and a deadline for commencing the proceedings will be designated, for which paragraph 2 will be used analogously. The suspended proceedings will continue after the valid conclusion or the fruitless expiry of the aforementioned deadline.

(2) Foreign judgements on other matters are recognised upon the basis of a special judgement, provided this Act does not state that any such foreign judgements are recognised without any further proceedings. Even if the foreign judgements are recognised without any further proceedings, they can also be recognised by means of a special judgement, if so proposed by a party in the proceedings. The declaration of any such recognition pertains to the locally appropriate court, i.e. the general court of the party which proposes the recognition or otherwise to the district court, in whose district any fact which is significant for the act of recognition has occurred or could occur, unless this Act states otherwise. The court will issue a judgment on the recognition; it need not call a hearing.

(3) It is possible to order the enforcement of a foreign judgement pertaining to property matters which fulfils the conditions for recognition according to this Act by means of a judgement of a Czech court which must be justified.

### **CHAPTER IV**

#### **THE SPECIAL PROVISIONS PERTAINING TO THE RECOGNITION AND ENFORCEMENT OF SOME FOREIGN JUDGEMENTS**

##### Section 17

The provisions of this chapter are used in proceedings pertaining to the recognition and enforcement of foreign judgements based on any directly applicable European Union regulations or any international treaties which require a declaration of the ability to enforce a foreign judgement.

##### Section 18

The court will issue a judgement on the recognition, if a party requests that the recognition should be ruled on in special proceedings according to directly applicable European Union regulations or an international treaty. It need not call a hearing.

##### Section 19

(1) A motion for the enforcement of a decision according to another legal regulation must be submitted simultaneously with the motion for the declaration of the ability to enforce the judgement. In such a case, the court will rule on both motions with independent statements in a single judgement; each

such statement must be suitably substantiated. The judgement must also be justified, even if only one of the motions is ruled on.

(2) If the court has proceeded in accordance with subsection 1 and if the directly applicable European Union regulation or the international treaty sets out a deadline for the submission of a remedial measure against the decision concerning recognition or the decision concerning the declaration of the ability to enforce foreign judgements which is longer than the deadline for the submission of remedial measures against a decision requiring the enforcement of the foreign judgement as designated by any other legal regulation, the longer deadline will also apply to the submission of the remedial measure against a decision ordering the enforcement of a judgement.

(3) If the court of appeal investigates the grounds upon the basis of which a foreign judgement may not be recognised and if said grounds could not have been investigated by the court of first instance in accordance with the directly applicable European Union regulations or an international treaty and furthermore if said grounds support the non-recognition of the foreign judgement, the court of appeal will amend the ruling of the court of first instance and as such will reject the proposal.

(4) A decision in a statement ordering the enforcement of a judgement cannot come into legal effect earlier than the statement declaring the ability to enforce the judgement coming into legal effect.

## **PART THREE**

### **THE GENERAL PROVISIONS OF PRIVATE INTERNATIONAL LAW**

#### **Section 20**

##### **Qualifications**

(1) The legal evaluation of a specific legal relationship or question for the purpose of identifying the applicable provisions governing conflicting laws during the designation of the applicable law is usually undertaken in accordance with Czech law.

(2) If legal provisions from more than one body of laws are to be used for a specific legal relationship or question, it is also possible to take into account the function which said provisions fulfil within the framework of their given body of laws when assessing these provisions in accordance with the provisions of subsection 1.

(3) If the applicable law has been designated for the basic relationship, the evaluation of any specific legal relationships or questions which are associated with the basic relationship is also usually undertaken according to this law.

(4) The facts stated in the rules governing conflicting laws of this Act for the purpose of designating the applicable law (the connecting factors) are evaluated in accordance with Czech law.

#### **Section 21**

##### **Transmission and remission**

(1) If the provisions of this Act order the use of a foreign body of laws, whose provisions refer back to Czech law, the substantive law provisions of Czech law are to be used. If the provisions of the foreign body of laws refer to the law of a further foreign state, the substantive law provisions of said body of laws are to be used, if they are to be used in accordance with its rules governing conflicting laws; otherwise, the substantive law provisions of Czech law are to be used.

(2) Neither remission nor transmission is to be taken into account in relationships involving the law of contracts or labour law. If the applicable law has been chosen by the parties, it is only possible to take into account its rules governing conflicting laws, if this arises from the agreement concluded between the parties.

#### **Section 22**

##### **Preliminary questions**

(1) The provisions of this Act are used when designating the applicable law for a preliminary question. If the jurisdiction of the Czech courts is not given for a preliminary question or if it is ruled upon independently, the rules governing any conflicting provisions in the body of laws, which the preliminary question is subject to, are to be used to designate the applicable law in relation to the preliminary question, if the preliminary question is subject to a foreign body of laws.

(2) If a valid judgement on the preliminary question has been made by the appropriate body of a Czech public authority or by a court or body from a foreign country, whose judgement meets the conditions for recognition in the Czech Republic, the court will proceed in accordance with such a judgement.

#### **Section 23**

##### **The ascertainment and use of foreign law**

(1) Unless otherwise stated in the provisions of this Act, it is necessary to apply the provisions of a foreign body of laws which should be applied in accordance with the provisions of this Act, even without the submission of a motion to do so, and said body of laws must be applied in the way that it is used in the territory to which it applies. The provisions of the body of laws which would be used in the territory to which said body of laws applies are used to rule on the matter regardless of the systematic classification of said body of laws or its public law nature, provided they are not at odds with the necessarily applicable regulations from Czech law.

(2) Unless stated otherwise herein, the contents of the foreign body of laws which is supposed to be applied in accordance with the provisions of this Act are ascertained as a matter of official obligation and without the requirement of the submission of a motion to do so. The court or the public administration authority which rules on the matters regulated by this Act will implement all the necessary matters to ascertain the contents of said foreign body of laws.

(3) If the court or the public administration body which rules on the matters regulated by this Act is not familiar with the contents of the foreign body of laws, it can also request a statement from the Ministry of Justice in order to ascertain them.

(4) If the body of laws of a state which has several legal areas or different regulations for different groups of entities is supposed to be used, the legal regulations of the given state will be decisive for designating the use of the given regulations.

(5) Czech law will be used, if the contents of the foreign law are unable to be ascertained within a commensurate period or if this proves to be impossible.

#### **Section 24**

### **The exception and subsidiary designation of the applicable law**

(1) It is possible not to use the body of laws which should be used in accordance with the provisions of this Act in exceptional cases, where their use would appear to be inconsistent and at odds with the reasonable and just organisation of the relationship between the participants upon due consideration of all the circumstances pertaining to the matter and especially given the justified expectations of the participants with regard to the use of another body of laws. The body of laws which best corresponds to this situation is used under these conditions, provided the rights of any other parties remain unaffected.

(2) If it is not possible to designate the applicable law for a specific relationship or question which falls under the area regulated by this Act according to any other provisions of the Act, the body of laws which is most closely related is used, unless the parties have selected or otherwise designated a specific body of laws.

#### Section 25

### **The compulsorily applicable provisions of the other foreign law**

The provisions of the body of laws of another state, which are not supposed to be used in accordance with this Act, but which should be used according to the body of laws of which they are part regardless of which body of laws the rights and responsibilities involved are subject to, may be used in relation to a participant's motion. The precondition for their use is the fact that the rights and responsibilities involved must have a sufficient mutual relationship with the other state and this must be fair in relation to the nature of these provisions and their purpose, or to the consequences which would especially arise for the participants due to their use or non-use. Any participant who evokes the use of any such provisions must substantiate the validity and contents of these provisions.

### **The legal standing of foreigners and foreign legal entities in private law relations**

#### Section 26

(1) A foreigner is understood to be a natural person who is not a citizen of the Czech Republic. A foreign legal entity is understood to be a legal entity whose registered office is located outside the Czech Republic.

(2) Unless stated otherwise by this Act or any other legal regulation, foreigners and foreign legal entities have the same rights and the same obligations in the areas of personal and property law as citizens of the Czech Republic and Czech legal entities, unless this Act states otherwise.

(3) If a foreign state deals with citizens of the Czech Republic and Czech legal entities differently than with its own citizens and legal entities, the Ministry of Foreign Affairs may designate that subsection 2 is not used upon the basis of an agreement with the appropriate bodies set out in the official publication. This does not apply, however, if this involves foreigners and foreign legal entities which have the same rights and obligations as citizens of the Czech Republic and Czech legal entities in accordance with European Union law or if this would constitute a breach of the foreigners' basic human rights.

#### Section 27

The standing of foreigners and foreign legal entities engaging in business activities in the Czech Republic are regulated by different legal regulations in relation to the area of labour law, copyright law and industrial property law.

#### Section 28

### **Multiple or uncertain citizenship**

(1) If an individual is a citizen of the Czech Republic in the appropriate period and if another state also considers said individual to be its citizen, the decisive citizenship will be that of the Czech Republic.

(2) If an individual is simultaneously a citizen of several foreign states, the appropriate citizenship will be decided according to the last acquired citizenship, provided that the individual's living situation does not significantly favour the citizenship of another state of which said individual is also a citizen. The citizenship of any such state will be decisive in such a case.

(3) An individual who is not a citizen of any state in the decisive period or whose citizenship cannot be designated in accordance with subsection 2 is viewed as if said individual was a citizen of the state in whose territory he or she was usually resident in the decisive period or, if this cannot be ascertained, of the state in whose territory said individual was located in the decisive period. If not even that can be ascertained, the procedure for the purposes of this Act will be as if the individual in question was a citizen of the Czech Republic.

(4) If an individual has applied for international protection, is an asylum seeker or makes use of supplementary protection or is homeless according to another legal regulation or an international treaty, said individual's personal standing will be that of a refugee in accordance with the provisions of international treaties and said individual's legal standing will be that of an individual without any state citizenship.

## **PART FOUR**

### **THE PROVISIONS FOR THE INDIVIDUAL TYPES OF PRIVATE LAW RELATIONSHIPS**

#### CHAPTER I

#### THE CAPACITY TO HAVE RIGHTS AND OBLIGATIONS AND THE CAPACITY TO CARRY OUT LEGAL ACTS

#### Section 29

### **Physical entities**

(1) Unless this Act states otherwise, legal personality and legal capacity are subject to the body of laws of the state in which the individual has his or her usual residence.

(2) Unless this Act states otherwise, it is sufficient, if a physical entity undertaking a legal act has the capacity to do so according to the body of laws which is valid at the place in which said physical entity is undertaking the legal act in question.

(3) The regulation of the name of a natural person is subject to the body of laws of the state in which said individual is a citizen. This individual may, however, request the use of the body of laws of the state in whose territory said individual has his or her usual place of residence.

#### Section 30

## Legal entities

(1) Legal personality for legal entities and the capacity (other than that pertaining to physical entities) is subject to the body of laws of the state, according to which the legal entity was established. The trading company or name and the internal relationships within such an entity, the relationships between any such entity and its partners or members and the mutual relations between the partners or members, the liability of the partners or members for such an entity's liabilities, the individuals who act as the entity's bodies and its winding up are also all subject to the aforementioned body of laws.

(2) In order for such an entity to be bound by regular agreements, it is sufficient for them to have been reached in accordance with the body of laws valid at the place where such an agreement was concluded.

(3) A legal entity with its registered office in the Czech Republic may only be established in accordance with Czech law. This does not affect the option of relocating the registered office of a legal entity which was originally established according to the body of laws of a foreign state and which has its registered office abroad, to the Czech Republic, provided an international treaty, a directly applicable European Union regulation or any other legal regulation so allows.

### The capacity to endorse bills and cheques

#### Section 31

(1) The capacity of an individual to commit to bill or cheque obligations is subject to the body of laws of the state, in which he or she is a citizen. If this law is declared to be the applicable law of another state, the law of the state in question will apply.

(2) Whoever does not have the capacity to endorse bills or cheques according to the body of laws stated in subsection 1 will still be validly bound, if said individual signs a bill or a cheque in a state according to whose law the individual in question has the capacity to endorse bills and cheques. This does not apply in the case of a citizen of the Czech Republic or an individual who has his or her usual place of residence in the Czech Republic.

#### Section 32

An individual who can be designated as a cheque payer is subject to the body of laws of the state in which the cheque is due. If the cheque is considered to be invalid according to said body of laws due to the person of the cheque payer, the liabilities based on the signatures written on the cheque will still remain valid in any state whose body of laws does not designate the cheque as being invalid for the aforementioned reason.

### The limitation of legal capacity and guardianship

#### Section 33

(1) The jurisdiction of the Czech courts is given in matters of the limitation of legal capacity and guardianship, if this involves individuals whose regular place of residence is located in the Czech Republic or if this involves citizens of the Czech Republic, even if they have their usual place of residence abroad. The Czech court need not hold a hearing, if measures put in place abroad are sufficient to protect the rights and interests of a citizen of the Czech Republic.

(2) If the jurisdiction of the Czech courts is not given in accordance with subsection 1, the Czech court will limit itself to those measures which are necessary to protect the individual and his or her property and will inform the appropriate body in the state where said individual has his or her usual place of residence about any such adopted measures. If the appropriate body of the foreign state does not regulate the situation of the given individual, the Czech court will do so.

(3) The Czech court will not inform the bodies of the foreign state in accordance with subsection 2, if this involves individuals who have applied for international protection, asylum seekers and individuals subject to additional protection in accordance with another legal regulation. In such a case, the Czech court will regulate the given individual's situation.

#### Section 34

The conditions for the establishment and cancellation of guardianship and the conditions for the limitation and withdrawal of an individual's legal capacity are subject to the body of laws of the state in which the ward has his or her usual place of residence. The guardianship fundamentally concerns the ward and his or her property, no matter what said property may be, provided the state in which the property is located recognises the effectiveness of said guardianship.

#### Section 35

The obligation to accept and suspend guardianship is subject to the body of laws of the state in which the ward has his or her usual place of residence.

#### Section 36

The legal relations between the guardian and the ward are subject to the body of laws of the state in which the guardianship court or authority has its registered office.

#### Section 37

Unless otherwise stated in the provisions of Sections 34 to 36, the Czech court will implement measures in accordance with Czech substantive law.

#### Section 38

A final and conclusive foreign judgement on the matter of the limitation and withdrawal of legal capacity and on the matter of the guardianship of a foreigner which has been issued by a court or a body in the state of which the foreigner is a citizen (hereafter simply referred to as the "home state") or of the state in which the foreigner has his or her usual place of residence will be recognised without any further proceedings.

### Persons declared dead or missing

#### Section 39

(1) Only a Czech court has the exclusive right to declare a citizen of the Czech Republic dead or missing.

(2) A Czech court may declare a foreigner dead or missing with the legal consequences arising for citizens of the Czech Republic or for individuals with their usual place of residence in the Czech Republic and for any property located in the Czech Republic.

(3) Czech courts will always use Czech substantive law when declaring an individual dead or missing.

#### Section 40

A final and conclusive judgement on the matter of declaring a foreigner dead or missing which has been issued by the courts or the bodies of the foreigner's home state or in the state where the foreigner had his or her usual place of residence will be recognised without any further proceedings.

### CHAPTER II

#### LEGAL ACTIONS

##### Section 41

The existence and validity of a legal action, as well as the consequences of its invalidity, are subject to the same body of laws as the legal relationship based upon it, unless stated otherwise by this Act or unless something else arises from the nature of the matter. When designating the body of laws, the parties proceed as if the legal action was valid.

##### Section 42

(1) A contract and any other legal act are valid as far as their form is concerned, provided the form in question conforms to the body of laws of the state:

- a) which the contract or any other legal actions and the legal relationship established by them are subject to,
- b) in which an expression of will has been undertaken by any of the participants,
- c) in which any of the participants have their usual place of residence or registered office or
- d) in which the real estate, which the legal action concerns, is situated.

(2) If the body of laws, which a legal relationship established by a legal act is subject to or should be subject to, or the body of laws of the state in which the real estate which is the legal action concerns states that the adherence to a certain form is an essential precondition for the validity of said legal action, this form must be adhered to.

##### Section 43

#### **The form of bill and cheque declarations and protests**

(1) The form of bill declarations and the form of cheque declarations are subject to the body of laws of the state in which the given declaration is made. In the case of the form of the cheque declaration, it is sufficient to preserve the form which is designated by the body of laws which is valid in the place of payment.

(2) Any defect in the form of the first bill declaration or of the first cheque declaration will not influence the validity of any subsequent bill declaration or any subsequent cheque declaration, provided the bill declaration and the cheque declaration which is invalid in accordance with subsection 1, conforms with the body of laws of the state in which the subsequent bill declaration or the subsequent cheque declaration were made.

(3) The bill declarations and cheque declarations of a citizen of the Czech Republic abroad will be valid in the Czech Republic in relation to other citizens of the Czech Republic, provided said declarations conform to the requirements of the Czech body of laws with regard to their form.

(4) The form of the protest and the deadline for the protest as well as the form of the other acts which are necessary for exercising and preserving bill rights and cheque rights are subject to the body of laws of the state in which it is necessary to undertake the protest or any other such acts.

### CHAPTER III

#### REPRESENTATION

##### Section 44

(1) In the case of representation based in law or representation upon the basis of a court judgement or a decision by another body and its effects, the body of laws which includes the provisions regulating the representation based in law or the body of laws of the state whose court or body has issued the judgement on which the representation is based, is used. In the case of regular hearings, it is sufficient for this representation to come into effect, if it is in line with the body of laws which is valid in the place in which any such act was undertaken.

(2) Legal acts undertaken by a representative will have consequences for the represented party, provided they are in line with the body of laws which is valid in the place in which:

- a) the representative undertook the actions,
- b) the represented party has its registered office or usual place of residence,
- c) the representative has its registered office or usual place of residence or
- d) the real estate is located, provided the legal actions concern the real estate in question.

(3) Any legal actions undertaken by the representative will also have consequences for the represented party, if this is in line with the body of laws which the legal relations based on the representative's legal actions are subject to or should be subject to.

(4) In order to preserve the form of a power of attorney, it is sufficient if the form conforms to any of the bodies of laws stated in subsections 2 or 3 or to the body of laws which is valid in the place where the power of attorney was issued.

(5) The legal relationship between the representative and a third party which has arisen as a consequence of the overstepping of the representative's authorisation and the legal relationship between an entity acting on behalf of another without any authorisation and a third party are subject to the body of laws valid in the place where the representative or the entity acting on behalf of another without any authorisation has its registered office or usual place of residence. The third party may, however, request the use of the body of laws which is valid in the place where the actions of the representative or the entity representing another without any authorisation took place.

##### Section 45

#### **Procuracy and activities authorised during the operation of a business establishment**

The consequences of actions undertaken upon the basis of procuracy for the represented party are subject to the body of laws of the state where the entity which issued the procuracy has its registered office or usual place of residence. The consequences of actions undertaken upon the basis of activities authorised during the operation of a business establishment for the represented party are subject to the body of laws of the state in which the represented business establishment has the plant, branch or premises whose operations have led to the activities of the authorised individual. It is, however, sufficient if these consequences occur in accordance with the body of laws valid in the place in which the holder of procuracy or the authorised individual acted with a third party and, if the legal action in question concerns real estate, also according to the body of laws which is valid in the place where the real estate is located.

## CHAPTER IV

### STATUTES OF LIMITATION

#### Section 46

The statute of limitation is subject to the same body of laws as the right which constitutes the subject of the statute of limitations.

## CHAPTER V

### FAMILY LAW

#### Part 1

#### Spousal relationships

#### Section 47

##### Jurisdiction

(1) Unless an international treaty or directly applicable European Union regulation states otherwise, it is sufficient that one of the spouses is a citizen of the Czech Republic or that the defendant has his or her usual place of residence in the Czech Republic in order to establish the jurisdiction of the Czech courts in proceedings concerning the dissolution of marriage, the annulment of marriage and the designation of whether or not a marriage has legally occurred.

(2) If the spouses are foreigners and the defendant does not have his or her usual place of residence in the Czech Republic or in any other European Union member state and is not a citizen of a European Union member state and does not have his or her domicile in the United Kingdom of Great Britain and Northern Ireland or in Ireland, the jurisdiction of the Czech courts set out in subsection 1 is given, if

- a) both spouses had their usual place of residence in the Czech Republic and the plaintiff still has his or her usual place of residence in the Czech Republic,
- b) the plaintiff has his or her usual place of residence in the Czech Republic and the second spouse has agreed with the motion, or
- c) the plaintiff has his or her usual place of residence in the Czech Republic and has had this residence for a period of at least one year directly prior to the submission of the motion.

(3) In the case of proceedings involving the maintenance obligations between spouses and former spouses, the jurisdiction of the Czech courts is designated in accordance with the directly applicable European Union regulation 2).

#### The applicable law

#### Section 48

(1) The capacity of an individual to solemnise a marriage as well as the conditions for the validity thereof are subject to the body of laws of the state of which the individual in question is a citizen.

(2) The form of the solemnisation is subject to the body of laws valid in the place where the marriage is solemnised.

(3) The solemnisation of a marriage at a foreign mission of the Czech Republic abroad is subject to Czech law.

(4) A citizen of the Czech Republic may not solemnise a marriage at a foreign mission of another state located in the Czech Republic.

#### Section 49

(1) The personal relations of spouses are subject to the body of laws of the state of which they are both citizens. If they are citizens of different states, these relations are subject to the body of laws of the state in which both spouses have their usual place of residence or otherwise to Czech law.

(2) Maintenance obligations between spouses are subject to the body of laws designated by the international treaty, the use of which is designated by the directly applicable European Union regulation 2).

(3) The property relations of spouses are subject to the body of laws of the state in which both spouses have their usual place of residence; otherwise to the body of laws of the state of which both spouses are citizens; otherwise to Czech law.

(4) The contractual regulation of the spousal property rights is subject to the body of laws which was applicable for the spouses' property relations as of the moment when the contractual agreement was concluded. Otherwise, spouses may also decide that their property relations will either be subject to the body of laws of the state of which one of the spouses is a citizen or in which one of the spouses has his or her usual place of residence or to the body of laws of the state in which any real estate is located, provided this involves real estate, or to Czech law. Any such agreement must be the subject of a notary record or of a similar document, if the agreement is concluded abroad.

#### Section 50

(1) The dissolution of a marriage is subject to the body of laws of the state whose body of laws the spouses' relations were subject to at the moment of the commencement of proceedings.

(2) If it is necessary in accordance with subsection 1 to use a foreign body of laws which does not enable the dissolution of a marriage or only does so under exceptionally onerous circumstances, Czech law will be used, if at least one of the spouses is a citizen of the Czech Republic or at least one of the spouses has his or her usual place of residence in the Czech Republic.

(3) When declaring that a marriage has been annulled or designating whether or not a marriage exists, the capacity to solemnise a marriage and the form of solemnisation will be assessed in accordance with the bodies of laws which were applicable as of the moment of the solemnisation of the marriage.



(4) The maintenance obligations between former spouses are subject to the body of laws designated by the international treaty whose use is designated by the directly applicable European Union regulation 2).

### **The recognition of foreign judgements**

#### **Section 51**

(1) Final and conclusive foreign judgements concerning matters of the dissolution of marriage, legal separation, the declaration of a marriage as invalid and the designation of whether or not a marriage exists where at least one of the participants in the proceedings is a citizen of the Czech Republic are recognised in the Czech Republic on the basis of a special judgement, provided this is not prevented by the provisions of section 15, subsection 1, letters a) to e).

(2) The statement as to the fact that a judgement pertaining to the matters set out in subsection 1 has been recognised is to be issued by the Supreme Court. A motion may be submitted by the participants in the proceedings, as well as any party which substantiates its legal interest in doing so. The Supreme Public Prosecutor's Office may enter the commenced proceedings. The Supreme Court will reach its decision in a judgement and it need not call a hearing.

(3) The judgements set out in subsection 1 can only be recognised, if the facts on which the judgement has been based have been ascertained in a manner which essentially conforms to the appropriate provisions of Czech law.

#### **Section 52**

If all of the participants in the proceedings were citizens of the state which issued the judgement, foreign judgements pertaining to the matters set out in section 51 will have the same legal effects in the Czech Republic as final and conclusive judgements of the Czech courts without the need for any further proceedings. This also applies in the case of final and conclusive judgements pertaining to these matters issued by the bodies of other foreign states, if such judgements are recognised in the home states of all the participants in the proceedings who are foreigners.

## **Part 2**

### **The relationships between parents and children and some other relationships**

#### **Section 53**

#### **The jurisdiction in the matter of the designation and denial of parenthood**

A motion for the designation and denial of parenthood may be submitted to the defendant's general court in the Czech Republic. If the defendant does not have a general court here, this may be submitted to the plaintiff's general court. The jurisdiction of the Czech courts is also given, if not even the plaintiff has a general court in the Czech Republic, but one of the parents or the children is a citizen of the Czech Republic.

#### **Section 54**

#### **The applicable law in matters of the designation and denial of parenthood**

(1) The designation and denial of parenthood is subject to the body of laws of the state into whose jurisdiction the child has been born. If the child has acquired more than one nationality upon birth, the judgement will be made in accordance with Czech law. If it is in the interests of the child, the body of laws of the state in which the child's mother had her usual place of residence as of the moment of conception will be used.

(2) If the child has its usual place of residence in the Czech Republic and if it is in the child's interests, Czech law will be used in the case of the designation or denial of parenthood.

(3) In order for the designation of parenthood to be valid, it is sufficient if it occurs according to the body of laws of the state in which the declaration of the recognition of parenthood occurred. If parenthood has been denied and the parenthood of another individual has been designated during a court hearing or in an out-of-court settlement in a foreign state in accordance with the local body of laws, this is sufficient for the designation of said individual's parenthood to be considered valid.

#### **Section 55**

#### **The recognition of foreign judgements in matters of the designation and denial of parenthood**

(1) The provisions of Section 51 are used analogously for the recognition of foreign judgements pertaining to the matters of the designation and denial of parenthood, if at least one of the participants in the proceedings is a citizen of the Czech Republic.

(2) If all of the participants in the proceedings were citizens of the state whose jurisdiction is involved in the decisive period, or if any such judgements by the bodies of foreign states are recognised in the home states of all the participants in the proceedings who are foreigners, the provisions of Section 52 are used analogously for the recognition of foreign judgements pertaining to the matters of the designation and denial of parenthood.

#### **Section 56**

#### **The jurisdiction in matters of the maintenance, upbringing and care of a minor**

(1) If the jurisdiction in the matter of maintenance obligations and in matters of parental responsibility has not been regulated by the directly applicable European Union regulations, the matters of the maintenance, upbringing and further care of a minor, including the measures for the protection of the minor's person and property, fall under the jurisdiction of the Czech courts, if the minor has his or her usual place of residence in the Czech Republic or if he or she is a citizen of the Czech Republic, even if he or she is usually resident abroad. The Czech court need not hold a hearing, if the measures implemented abroad are sufficient to protect the rights and interests of a citizen of the Czech Republic.

(2) A Czech foreign mission may assume the care of a minor who is a citizen of the Czech Republic and has his or her usual place of residence abroad and for whom nobody is exercising the parental rights and responsibilities and may do so to the extent of the jurisdiction of the courts, provided the state in which the minor has his or her usual place of residence recognises this type of jurisdiction. The foreign mission will inform the Institute for the International Protection of Children of the assumption of care without any undue delay.

(3) The jurisdiction of the Czech courts is also given in the case of proceedings concerning maintenance, in which the annulment or alteration of a judgement of a Czech court is proposed against an authorised party with his or her usual place of residence abroad.

(4) Upon being requested to do so by the obligor, the Czech courts are authorised to rule on the alteration or annulment of the maintenance obligations imposed by means of a judgement of a body of a foreign state, if the obliged party does not have his or her usual place of residence in the state whose body issued the original judgement.

(5) If proceedings are held involving the dissolution of the marriage of the parents of a foreigner, who is a minor and does not have his or her usual place of residence in the Czech Republic, but is present there, the Czech courts will be entitled to regulate the rights and obligations of the parents towards the minor in the period after the divorce, provided the minor will further remain in the territory of the Czech Republic and provided the bodies of the given foreign state do not implement any other measures.

#### Section 57

### **The applicable law in matters of the maintenance, upbringing and care of a minor and for some other relationships**

(1) The relations between parents and children with regard to the matter of maintenance are subject to the body of laws designated by the international treaty, whose use is set out by the directly applicable European Union regulation 2). The applicable law in the matter of the right of authorised entities from other relationships to maintenance is also designated in the same way.

(2) The applicable law is designated in accordance with international treaty 3) in all other matters of parental rights and responsibilities and measures aimed at protecting the person or property of a child.

#### Section 58

### **The recognition of foreign judgements in the matters of minors**

Final and conclusive judgements on matters of the upbringing, maintenance and care for a minor and on any other matters which concern them which have been issued in the state of which a foreign child is a citizen or in which such a child has his or her usual place of residence and where all of the participants are foreigners are recognised without any further proceedings. If any such judgement imposes performance involving property, such a judgement can be recognised and enforced, provided none of the impediments set out in Section 15, subsection 1, letters b) to e) prevent this.

## **Part 3**

### **The rights of unmarried mothers**

#### Section 59

(1) The entitlements of the mother of a child in relation to the father to whom she is not married are subject to the body of laws of the state in which the mother had her usual place of residence at the time of the birth of the child. The mother may request the use of the body of laws of the state of which she was a citizen at the time of the birth of the child. The entitlements of unmarried pregnant women are subject to the legal regulations of the state in which she has her usual place of residence at the time of the submission of the motion, unless she requests the use of the body of laws of the state of which she was a citizen at the time of the submission of the motion.

(2) If the mother of a child who is a foreigner has her usual place of residence in the Czech Republic at the time of the birth of the child and if the father of the child is a citizen of the Czech Republic, the rights of the child's mother will be subject to Czech law.

## **Part 4**

### **Adoption**

#### Section 60

### **Jurisdiction**

(1) The right to rule on matters of adoption pertains to the Czech courts, if the adoptive parent is a citizen of the Czech Republic. If the adoptive parents are spouses, it is sufficient if only one of them is a citizen of the Czech Republic.

(2) If neither the adoptive parent nor any of the spouses is a citizen of the Czech Republic, the jurisdiction of the Czech courts arises, if:

- a) the adoptive parent or at least one of the adoptive spouses is resident here and if the court's judgement can be recognised in the home state of the adoptive parent or in the home states of both adopting spouses, or
- b) if the adoptive parent or at least one of the adopting spouses has his or her place of usual residence in the Czech Republic.

(3) If the minor who is the subject of the adoption is a citizen of the Czech Republic and has his or her usual place of residence within the territory of the Czech Republic, the jurisdiction to rule on the adoption will apply exclusively to the Czech courts.

### **The applicable law**

#### Section 61

(1) In order to be able to adopt, it is necessary to fulfil the conditions set out by the body of laws of the state of which the adopted child is a citizen and of the state of which the adoptive parent is a citizen.

(2) If the adopting parents have different citizenships, the legal conditions from the bodies of laws of the states of both spouses according to their citizenship must be fulfilled, as must the conditions of the body of laws of the state in which the adopted child is a citizen.

(3) If it is necessary in accordance with subsections 1 and 2 to make use of a foreign body of laws which does not enable adoption or only does so under exceptionally onerous circumstances, Czech law is used, if the adoptive parent or at least one of the adopting spouses or the adopted child has their usual place of residence in the Czech Republic.

#### Section 62

(1) The effects of the adoption are subject to the body of laws of the state of which all of the participants were citizens as of the time of the adoption, the body of laws of the state in which all of the participants had their usual place of residence as of the time of the adoption, or otherwise the body of laws of the state in which the adopted child is a citizen.

(2) The body of laws designated according to the provisions of Section 57 is used analogously to regulate the relations between the adopted child and the adoptive parent or the adopting spouses in matters of parental rights and responsibilities, upbringing and maintenance.

### **The recognition of foreign judgements**

## Section 63

(1) If the adoptive parent, either of the adopting spouses or the adopted child was a citizen of the Czech Republic at the time of the adoption, any foreign adoption judgements will be recognised in the Czech Republic, if to do so does not contravene public order, if this is not prevented by the exclusive jurisdiction of the Czech courts and if the adoption would also be permissible according to the substantive law provisions of Czech law. The provisions of Section 16, subsection 2 apply for the recognition proceedings.

(2) If all of the participants in the proceedings were foreigners in the decisive period, any foreign adoption judgements are recognised in the Czech Republic without any further proceedings, if to do so does not contravene public order and provided any such judgements are recognised in the home states of all of the participants.

(3) The provisions of subsections 1 and 2 are used analogously for adoptions abroad which would have taken place on the basis of something other than a judgement.

## Part 5

### Wardship and guardianship of minors

#### Section 64

##### Jurisdiction

(1) The provisions of Section 56, subsection 1 apply analogously to the jurisdiction of the Czech courts in matters of the wardship and guardianship of minors.

(2) If the jurisdiction of the Czech courts in these matters does not arise from the provisions of subsection 1, the Czech court will proceed analogously in accordance with the provisions of Section 33, subsections 2 and 3.

#### Section 65

##### The applicable law

(1) With regard to the wardship and guardianship of minors, the body of laws of the state whose court of authority rules on this, is used. If, however, the protection of the person and the property of the minor so requires, it is also possible in exceptional cases to use the body of laws of the state with which the given situation has a substantial relationship.

(2) If the minor's usual place of residence changes and the minor therefore has his or her usual place of residence in another state, the conditions for the wardship and guardianship established in the state in which the minor had his or her usual place of residence will become subject to the body of laws of the new state as of the moment of the change in residence.

(3) Remission and transmission are not taken into account during the use of subsections 1 and 2.

(4) The provisions of Sections 35 and 36 are used analogously.

#### Section 66

##### The recognition of foreign judgements

The provisions of Section 38 are used analogously for the recognition of the validity of foreign judgements in matters of wardship and guardianship.

## CHAPTER VI

### REGISTERED PARTNERSHIPS AND SIMILAR RELATIONSHIPS

#### Section 67

(1) Czech courts are entitled to rule on the annulment, invalidity and non-existence of a registered partnership or a similar partnership, if the registered partnership has been concluded in the Czech Republic or at least one of the partners is a citizen of the Czech Republic and has his or her usual place of residence in the Czech Republic.

(2) Registered partnerships and similar relationships and their effects, the capacity to solemnise them and their annulment, invalidity and non-existence are subject to the body of laws of the state in which the registered partnership or similar partnership has been or was solemnised. The same body of laws is also used for the regulation of the personal and property relations of the partners.

(3) Foreign judgements on the annulment, invalidity and non-existence of a registered partnership or a similar relationship which have been issued in the state where the registered partnership or similar relationship was solemnised or where they are recognised, are recognised without any further proceedings.

## CHAPTER VII

### IN REM RIGHTS

#### Section 68

##### The jurisdiction pertaining to the rights to real estate

Judgements on the rights to real estate which is located in the Czech Republic fall under the exclusive jurisdiction of the Czech courts or any other appropriate public authority bodies.

##### The applicable law

#### Section 69

(1) The *in rem* rights to real estate and to tangible chattels are subject to the body of laws of the place where the property is located, provided this Act or any other legal regulations do not state otherwise. The property is also designated as movable or immovable in accordance with the given body of laws.

(2) The *in rem* rights to vessels and aeroplanes which are entered in a public register and their establishment and termination are subject to the body of laws of the state under whose jurisdiction said register is maintained.

## Section 70

(1) The establishment and termination of *in rem* rights to tangible moveable chattels are subject to the body of laws of the place where the chattel was at the time when the event occurred which gave rise to the establishment or cancellation of the rights.

(2) The establishment and termination of *in rem* rights to tangible moveable chattels which are transferred on the basis of a contract are subject to the body of laws which the contract, which gave rise to the establishment or termination of the rights, is subject to.

(3) If the legal actions which are supposed to constitute the basis for the establishment and termination of *in rem* rights to tangible moveable chattels have been undertaken after the commencement of the transportation of any such items and during the transportation period, the establishment and termination of the rights in question are subject to the body of laws of the place from which the items were sent. If, however, the establishment and termination of the *in rem* rights to these items is based on the use of securities which must be submitted for the purpose of the release of the item and its subsequent disposal, the body of laws of the place in which the security was located at the time it was used applies.

## Section 71

The provisions pertaining to entries in public registers and similar lists which are valid in the place where the immoveable or moveable property is located are also used, if the legal grounds for the establishment, termination, limitation or transfer of the registered right are assessed in accordance with a different body of laws.

## Section 72

Acquisitive prescription is subject to the body of laws which is valid at the place where the item of property was located at the beginning of the acquisitive prescription period. The party acquiring the right by prescription may however request the use of the body of laws of the state in whose territory the acquisitive prescription was carried out, provided that all of the acquisitive prescription conditions of the body of laws of that state have been met since the time when the item of property came to the given state.

## Section 73

### **Trust funds and similar institutions**

(1) A trust fund or similar institution (hereafter simply referred to as "fund") is subject to the body of laws stipulated by the founder of the fund, provided that the designated body of laws regulates the fund or if the provisions of said law can be otherwise applied to the fund.

(2) If the body of laws is not stipulated in accordance with subsection 1 or it is not possible for it to be used, the fund will be subject to the body of laws of the state with which it is most closely associated. When designating the body of laws, it is especially necessary to take into account:

- a) the place from which the fund is administered,
- b) the place in which the property constituting the fund is predominantly located,
- c) the location of the registered office or usual place of residence of the trustee,
- d) the purposes of establishing the fund and the places where these purposes are supposed to be achieved.

(3) If it is possible to separate a certain element of the fund from the others, the applicable law may be designated for it separately.

(4) A fund established abroad is also recognised in the area of Czech law, if it demonstrates the fundamental characteristics required of it by Czech law.

## CHAPTER VIII

### INHERITANCE LAW

#### **Jurisdiction**

## Section 74

(1) The jurisdiction of the Czech courts to rule on an estate is given, if the deviser had his or her usual place of residence in the Czech Republic at the time of his or her death.

(2) If this involves real estate which is located in the territory of the Czech Republic, the Czech courts have exclusive jurisdiction to hear the bequest.

(3) If the deviser did not have his or her usual place of residence in the Czech Republic at the time of death, a Czech court will rule on the deviser's estate which is located in the Czech Republic, if the state whose body is authorised to rule on the estate has not released the estate of the devisees who have their usual place of residence in the Czech Republic to the Czech courts for a hearing or has not recognised the legal effects of their judgements or if the foreign state has refused to concern itself with the estate or has not issued a statement in relation to it. Czech courts are always entitled to rule on an estate which a citizen of the Czech Republic, whose usual place of residence was abroad, leaves within the territory of the Czech Republic, even if only some of the devisees whose usual place of residence is in the Czech Republic so request.

(4) The Czech court will limit itself to the measures necessary to secure the property for the devisees in the cases set out in subsections 1 to 3.

(5) In cases according to subsection 4, the court will issue the participants with confirmation of the fact that the hearing of the estate does not fall under the jurisdiction of the Czech courts upon being requested to do so by them; a regular investigation will be undertaken prior to issuing the document, provided it is warranted. If the property is to be sent abroad, the court will inform the devisees and creditors of this in writing and will also post the notification on the court's official notice board for a period of 15 days; this notification will be delivered to any known participants.

(6) The provisions of subsections 4 and 5 are not used, if property of slight value is to be issued to the funeral director or to a certain person in accordance with the applicable law.

## Section 75

If this involves property which is located abroad, the Czech court will only rule on the estate, if the foreign state has released any such property to the Czech courts for a hearing or has recognised the legal effects of the judgement of the Czech courts in these matters.

### **The applicable law**

## Section 76

Legal inheritance relationships are subject to the body of laws of the state in which the devisor had his or her usual place of residence at the time of death. Czech law is used, if the devisor was a citizen of the Czech Republic and at least one of the devisees has his or her usual place of residence in the Czech Republic.

## Section 77

(1) The capacity to draw up or cancel a will as well as the effects of any faults in the will and the manifestation thereof are subject to the body of laws of the state in which the devisor was a citizen at the time of the drawing up of the will or in which he or she had his or her usual place of residence at that time. The body of laws designated in the manner is also applicable with regard to the capacity to draw up and cancel any other types of provisions in case of death, including the designation of which further types of provisions are admissible in case of death.

(2) The will is valid from the point of view of its form, if the form conforms to the body of laws of the state:

- a) in which the devisor was a citizen at the time of the drawing up of the will or at the time of his or her death,
- b) in whose territory the will was drawn up,
- c) in which the devisor had his or her usual place of residence at the time of the drawing up of the will or at the time of his or her death,
- d) which should be used for the legal inheritance relations or which should have been used at the time when the will was drawn up, or
- e) in which the real estate is located, if this involves real estate.

This also applies to the form of the cancellation of the will.

(3) The provisions of subsection 2 are also used for the form of an inheritance contract and any other provisions in the case of death analogously, whereby the devisor will be understood to be one of the parties to the inheritance contract. This also applies to the form of the cancellation of the inheritance contract and to any other provisions in the case of death.

(4) The devisor may state in the will that the will be subject to the body of laws of the state in which the devisor had his or her usual place of residence at the time of drawing up the will instead of the applicable law designated in any other way, including with regard to any real estate in the estate, or may designate that the legal inheritance relations, including any real estate in the bequest, will be subject to the body of laws of the state in which he or she was a citizen at the time of drawing up the will.

(5) The contractual parties to the inheritance contract may select any of the bodies of laws set out in subsection 4 for the legal inheritance relations, whereby the devisor will be understood to be one of the parties to the inheritance contract. This also applies analogously to any other provisions in the case of death.

## Section 78

The devisor's items and rights located in the territory of the Czech Republic will be forfeited to the Czech Republic, if there is no devisee; the judgement on this falls under the jurisdiction of the Czech courts. A state or any other territorial formation or an institution existing for these cases is not considered to constitute a devisee, unless they have been designated as a devisee in the will.

### **The recognition of foreign judgements**

## Section 79

Final and conclusive foreign judgements in matters of inheritance which have been issued in the state in which the devisor had his or her usual place of residence at the time of death or of which the devisor was a citizen, and where this involves a state which has released the estate of devisees who have their usual place of residence in the Czech Republic to the Czech courts for a judgement or which has recognised the legal effects of their judgements in these matters, are recognised without any further proceedings, provided this is not prevented by the jurisdiction of the Czech courts. It is not possible to recognise a foreign decision which is at odds with the provisions of Section 78.

## CHAPTER IX

### INTELLECTUAL PROPERTY RIGHTS

## Section 80

Intellectual property rights are subject to the body of laws of the state which recognises these rights and provides them with protection.

## CHAPTER X

### SECURITIES, INVESTMENT TOOLS AND OTHER DOCUMENTS

## Section 81

#### **Jurisdiction in the matters of the redemption of instruments**

A Czech court is only authorised to declare an instrument issued abroad as having been redeemed, if the redemption thereof can have legal ramifications in the Czech Republic in accordance with the nature of the matter.

#### **The applicable law in the matters of securities and investment instruments**

## Section 82

Depending on the nature of the security, the question as to whether or not a security has been validly issued, whether there are any rights associated with it in any way so that once the security has been issued they cannot be applied throughout its period of validity without the security, and what rights and what legal effects are associated with them are subject to:

- a) the body of laws which the capacity and internal relations of the legal entity which issued the security are subject to,
- b) the body of laws which the relations which have been established by means of the issue of the security are subject to,

c) the body of laws which is valid in the place where the security was issued,

d) the body of laws of the state in which the entity issuing the security has its registered office or usual place of residence, if the use of any other rights does not correspond to the nature of the security, or

e) the body of laws which is designated in the security, if the nature of the security so allows.

### Section 83

(1) Unless stated otherwise in this Act, the rights pertaining to the security are subject to the body of laws valid in the place where the security is located, and the transfer of the rights to the security is subject to the body of laws which is valid at the place where the security is located at the time of the transfer.

(2) A right of lien on a security is subject to the body of laws valid in the creditor's usual place of residence or registered office in the relevant period, unless the parties choose a different body of laws; remission and transmission are inadmissible. If this involves a security which must be presented for the purpose of the release of an item and the use thereof, the body of laws valid in the place in which the security is located in the relevant period is used.

(3) Regardless of subsections 1 and 2, the handling of a registered or immobilised security or any other security entered into records or the exercising of a right which has been entered into records and behaves like a registered security are subject to the body of laws of the state in which the records of the entry are held; remission and transmission are inadmissible. The selection of the body of laws is only admissible, if this involves the body of laws of a state in which the entity holding the records has its registered office or a branch as of the moment of the choice of the body of laws and if the keeping of records is among the usual activities of this entity.

(4) If investment instruments, including any rights associated with them, have been designated in order to secure the rights:

a) of a participant or the operator of a system of payments with settlement finality, of a foreign system of payments with settlement finality, of a settlement system with settlement finality or of a foreign settlement system with settlement finality, provided these rights have arisen upon the basis of said individual's participation in the system or the operation of the system, or

b) of the central bank of any of the member states of the European Union or any of the states making up the European Economic Area or of the European Central Bank,

the rights of these entities or of any entities acting on their behalf based on the security are subject to the body of laws of the state in which the records of the investment instruments, which include the entry forming the basis of the legal effects from these actions, are held.

(5) If investment securities, collective investment securities or money market instruments, for which the ownership rights or any other *in rem* rights are substantiated by means of an entry in the records, are provided as the subject of financial security, or if any rights arising from the entry of an investment security, a collective investment security or money market instruments into the records, are provided as financial security by means of an entry in the records which enables the authorised party to directly or indirectly dispose of any such security or instrument in at least a similar way as an authorised holder, are provided as the subject of financial security, the following is subject to the body of laws of the state in which the records are held:

a) the legal nature of the subject of the financial security and the *in rem* law effects of this financial security,

b) the conditions required for the establishment of the financial security, for the provision of any such item of financial security and for any further conditions so that the financial security comes into effect for third parties,

c) the order of the ownership or other rights to the subject of the financial security arising from its entry in the records and the acquisition conditions from an entity which is not the owner,

d) the conditions and methods of providing satisfaction from the subject of the financial security, if the decisive situation occurs 4).

(6) The offer of the takeover of securities made to the owners of any participating securities issued by a joint stock company with its registered office in the Czech Republic and whose participating securities are accepted for trading in the regulated market in the Czech Republic are subject to Czech law, as are any legal matters associated with the offer of the takeover of securities with an international element.

(7) The selection of a different body of laws in the cases set out in subsection 4 and the selection of a different body of laws and remission and transmission in the cases set out in subsection 5 are prohibited.

(8) The applicable law for the existence and transfer of a right of lien on shares and securities issued by any of the legal entities participating in a cross-border transaction is designated according to a different legal regulation.

## CHAPTER XI

### THE LAW OF OBLIGATIONS

#### Part 1

##### The basic provisions

#### Section 84

The provisions in this chapter are used in association with the directly applicable European Union regulations and the international treaties 5). The regulations in this chapter are limited to the matters which do not fall under the scope of the regulations and treaties, unless these regulations and treaties permit such regulation in this Act.

#### Part 2

##### The procedural provisions

#### Section 85

##### Jurisdiction

The jurisdiction of the Czech courts in matters of the law of obligations and other property rights may also be based upon an agreement between the parties undertaken in writing. The material appropriateness of the Czech courts cannot, however, be changed by any such agreement.

### **Stipulating the jurisdiction of a foreign court**

(1) The jurisdiction of a foreign court may be agreed by the parties in writing with regard to matters of the law of obligations and other property rights. In matters involving insurance and consumer contracts, any such agreements are only possible after the establishment of a dispute or if they enable only the policyholder, the insured entity, any other authorised entity, the damaged party or the consumer to commence proceedings at a court in another state.

(2) If the jurisdiction of a foreign court has been agreed in accordance with subsection 1, this rules out the jurisdiction of the Czech courts. A Czech court may, however, hear the matter, if:

- a) the participants identically declare that they do not insist upon their initial agreement,
- b) a judgement issued abroad could not be recognised in the Czech Republic,
- c) the foreign court has refused to concern itself with the matter, or
- d) the agreement on the jurisdiction of the foreign court is at odds with public order.

## **Part 3**

### **Contracts**

#### **Section 87**

(1) Contracts are subject to the body of laws of the state with which the contract is most closely associated, provided the contractual parties have not explicitly selected the applicable law. The selection of the law must be expressly stated or it must be apparent from the provisions of the contract or from the circumstances of the case without any doubts.

(2) If the legal relationships established by a consumer contract are closely associated with the territory of any European Union member state, the consumer may not be relieved of any of the protection which applies in accordance with Czech law, if the proceedings take place in the Czech Republic, even if the law of another state which is not a member of the European Union state has been chosen for the contract or is to be otherwise applied.

(3) Insurance policies are subject to the law of the state in which the policyholder has his or her usual place of residence. The contractual parties can select the applicable law for the insurance policy; if this involves an insurance policy which is subject to a directly applicable European Union regulation, the contractual parties may select the applicable law within the scope allowed by this regulation.

(4) In the case of a contract involving the use of one or more accommodation facilities agreed in return for remuneration for more than one time period, provided the contract has been negotiated for a period of more than one year (hereafter simply referred to as the "temporary use of an accommodation facility"), an advantage associated with the accommodation, provided the contract has been negotiated for a period of more than one year (hereafter simply referred to as a "long-term recreation product"), assistance during the remunerated transfer of the temporary use of the accommodation facility or of a long-term recreation product or participation in the exchange system which enables consumers to mutually transfer the right to use an accommodation facility or any other services associated with the temporary use of an accommodation facility according to another legal regulation, provided the applicable law is other than the law of a European Union member state, the consumer may not be relieved of the protection according to Czech law, if the proceedings take place in the Czech Republic and if:

- a) any of the affected real estate is located within the territory of a European Union member state, or
- b) the business entity associated with the real estate in question undertakes its activities within the territory of a European Union member state or if the performance of its activities are in any way focussed on the territory of a European Union member state.

## **Part 4**

### **Labour law**

#### **Section 88**

### **Jurisdiction**

(1) The jurisdiction of the Czech courts in labour matters may also be established by means of an agreement of the parties undertaken in written form. The material jurisdiction of the Czech courts cannot, however, be changed by any such agreement.

(2) If the jurisdiction of the Czech courts would be given in any other way, it is only possible to negotiate the jurisdiction of a foreign court in writing after the establishment of a dispute or if the provisions only enable the employees to commence proceedings at a foreign court. The provisions of Section 86, subsection 2 are used analogously.

#### **Section 89**

### **The applicable law for some labour relations**

Employment which has been established other than by means of a contract is subject to the body of laws of the state according to which the employment has been established.

## **Part 5**

### **Unilateral legal acts**

#### Section 90

Legal relations which have been established on the basis of unilateral legal actions are subject to the body of laws of the state in which the entity which has undertaken the unilateral legal act had its usual place of residence or its registered office at the time when it undertook the legal act, unless said entity has selected the use of a different body of laws.

## **Part 6**

### **The securing of liabilities, the consequences of breaches and changes in liabilities**

#### Section 91

(1) The securing of a liability is subject to the same body of laws as the secured liability, unless this involves *in rem* rights or if something else arises from the law or from the nature of the item or if the parties or the party which has provided the security by means of a unilateral expression of its will select a different body of laws. Rights of lien on receivables and other rights are subject to the same body of laws as the receivable or any other right which has given rise to the right of lien is subject to, unless the parties have selected the use of another body of laws. The selection or change of the body of laws does not affect the rights of any third parties. The debtor can only be subjected to the rights which arise from the body of laws to which the secured liability is subject.

(2) The consequences of any breach of the law are subject to the same body of laws as the liability.

(3) The transfer of rights and legal obligations is subject to the body of laws which is applicable for cases which the legal regulation sets out for any such transfer, unless something else arises from the nature of the given matter. The rights and liabilities will, however, continue to be independently subject to the body of laws which they were subject to up to the transfer.

## **Part 7**

### **Crediting**

#### Section 92

Crediting is subject to the same body of laws as the receivable against which any amount is credited. The parties may agree to select the use of a different body of laws.

## **Part 8**

### **The relationships based on bill and cheque rights**

#### Section 93

(1) The effects of the binding declarations of the recipients of a bill and the issuer of a promissory note are subject to the body of laws in the place of payment.

(2) The effects of any other bill declarations are subject to the body of laws of the state in which they were undertaken.

#### Section 94

The deadlines for all parties to exercise exoneration are subject to the body of laws by which the bill is bound according to its place of issue.

#### Section 95

The case as to whether the owner of a bill of exchange acquires the receivable which constitutes the basis for its issue is subject to the body of laws in the place of issue of the bill of exchange.

#### Section 96

The case as to whether it is possible to limit the receipt of a bill of exchange to part of the bill amount and whether the owner is obliged to accept partial payment is subject to the body of laws in the place of payment. The same principle applies to paying out on a promissory note.

#### Section 97

The measures which must be implemented if a bill has been lost or stolen are subject to the body of laws at the place of payment.

#### Section 98

The effects of cheque declarations are subject to the body of laws of the state in which they were made.

#### Section 99

The deadlines for the performance of the exoneration for all of the entities bound by the cheque are subject to the body of laws at the place where the cheque was issued.

#### Section 100

The body of laws of the state in which a cheque is payable is subject to:

- a) whether the cheque must be payable at sight or whether it may be issued for a specific time after sight and what effects will arise, if the cheque contains a later date than the actual date of issue,
- b) the deadline for submission,
- c) whether the cheque can be accepted, verified, confirmed or signed and what effects these clauses have,



- d) whether the owner may request partial payment and whether the owner must accept it,
- e) whether it is possible to cross the cheque or to equip it with the phrase "not negotiable" or with a phrase of the same meaning and what effects the crossing or "not negotiable" phrase or the phrase of the same meaning have,
- f) whether the owner has any special coverage rights and what these rights involve,
- g) whether the issuer can withdraw the cheque or resist the settlement of the cheque,
- h) the measures which must be implemented, if the cheque is lost or stolen,
- i) whether a protest or a finding of the same meaning is necessary to preserve the exoneration against the endorsers, the insurer and any other parties bound by the cheque.

## **Part 9**

### **Some non-contractual obligatory relationships**

#### Section 101

Non-contractual obligatory relationships arising from the violation of privacy and personal rights, including slander, are subject to the body of laws of the state in which said violation occurred. The injured party may however choose the use of the body of laws of the state in which:

- a) the injured party has his or her usual place of residence,
- b) the wrongdoer has its usual place of residence or registered office, or
- c) the result of the violation has occurred, providing it could have been foreseen by the wrongdoer.

## **PART FIVE**

### **JUDICIAL ASSISTANCE ABROAD**

#### Section 102

Unless stated otherwise, the courts make contact with foreign organisations via the Ministry of Justice.

#### Section 103

Upon being requested to do so, the Czech courts will provide foreign courts or authorities with judicial assistance under the condition of reciprocity. The assistance may be refused:

- a) if the performance of the requested act does not fall under the jurisdiction of the requested court; if, however, the realisation thereof falls under the jurisdiction of another court, the request will be forwarded to the court in question or to another authorised public administration body for settlement, or
- b) if the performance of the requested act contravenes public order.

#### Section 104

(1) The requested judicial assistance will be provided in accordance with Czech legal regulations. If so requested by a foreign organisation, it is possible to proceed in accordance with a foreign procedural regulation, provided the requested procedure is not at odds with public order.

(2) If a foreign court so requests, it is possible to question any witnesses, experts and participants in the proceedings, including under oath. This also applies, if it is necessary to submit declarations about the facts which are decisive for exercising or preserving entitlements made under oath abroad.

(3) The oath for the witnesses and participants in the proceedings is as follows: "I swear on my honour that I will tell the full and complete truth about everything that I am asked and that I will not withhold any information".

(4) The expert's oath is as follows: "I swear on my honour that I will present my expert opinion to the best of my knowledge and belief".

(5) As far as any additional oath is concerned, the wording of the oath will be changed accordingly.

#### Section 105

If a foreign written document is not accompanied by an official translation into Czech, it shall only be delivered to the recipient, if the recipient is prepared to accept it. The recipient must be instructed as to the fact that he or she must be aware of the legal consequences which may arise abroad, if the recipient refuses to accept delivery of the given document.

#### Section 106

(1) Upon being requested to do so by a Czech court, a Czech foreign mission will undertake:

- a) deliveries to individuals in the state where it carries out its activities, if to do so is in accordance with the international treaty or international law in general or if the regulations of the state where the act is to be undertaken do not prevent this,
- b) deliveries to citizens of the Czech Republic in the state where the act is supposed to be undertaken who enjoy diplomatic privilege and immunity there and the questioning of such citizens as witnesses, experts or participants in the proceedings,
- c) the questioning of witnesses, experts and participants in the proceedings, as well as any other procedural acts, provided said individuals present themselves voluntarily and if this is not prevented by the regulations which are valid in the state where the act is supposed to be undertaken or provided that is not prevented by any significant impediments.

(2) The Czech foreign mission will carry out its actions for the requesting court accordingly and in accordance with the regulations, and the actions undertaken by it will have the same effects as if the court had undertaken them itself.

(3) If inheritance proceedings are held abroad and the circumstances suggest that the devisee is a citizen of the Czech Republic or that said devisee has his or her usual place of residence in the Czech Republic, the court will implement actions aimed at securing the estate at the behest of the Ministry of Foreign Affairs. The locally appropriate court is the district court, in whose precinct the secured entity is resident, or otherwise the court in whose precinct the Ministry of Foreign Affairs has its registered office.

#### Section 107

Deliveries undertaken at the request of a Czech court by a foreign body as well as any evidence collected by it will be effective, even if they are not in accordance with the regulations of foreign law, provided they comply with Czech regulations.

#### Section 108

##### **A certificate of Czech law**

The Ministry of Justice will issue a certificate of the law valid in the Czech Republic to whoever requires it in order to exercise his or her rights abroad. Such a certificate may not include an interpretation of the legal regulation or an analysis of how the legal regulation should be applied with regard to a specific matter.

#### Section 109

##### **Higher verification of documents**

The Ministry of Justice and subsequently the Ministry of Foreign Affairs will append higher verification to documents which have been issued or verified by the courts or to documents which have been compiled or verified by a notary public or a court bailiff and which are to be used abroad, upon being requested to do so by the holder of said documents. Such higher verification cannot be appended to a simple copy of a document.

#### Section 110

##### **The statement of the Ministry of Justice**

In the case of any doubt when negotiating the matters regulated by this Act, the Ministry of Justice will provide a statement upon being requested to do so by the court.

**PART SIX**  
**BANKRUPTCY PROCEEDINGS**

CHAPTER I

THE GENERAL PROVISIONS

Section 111

(1) If the jurisdiction of the Czech courts to commence insolvency proceedings is given pursuant to the directly applicable European Union regulation 6), these proceedings will also apply to the debtor's property located in a state other than a European union member state, provided the state in question recognises the effects of such proceedings within its territory, and they will do so to the extent enabled by the body of laws of the foreign state in question. The insolvency trustee will also exercise his or her authority in the foreign state, provided the body of laws of the foreign state in question so enables, and will do so to the extent enabled by the foreign state's body of laws.

(2) Czech courts may commence and hold insolvency proceedings, if the debtor has business premises in the Czech Republic, if a creditor who has his or her usual place of residence or registered office in the Czech Republic so requests or if a receivable arises for the creditor during the activities of the business premises in question. In this case, the effects of the proceedings are limited to the property located in the Czech Republic.

(3) It is also possible to use its rules governing conflicting laws analogously except those cases which are subject to the directly applicable European Union regulations 6).

(4) If a judgement has been issued on the bankruptcy of a participant in a system of payments with settlement finality, a foreign system of payments with settlement finality, a settlement system with settlement finality or a foreign settlement system with settlement finality, or if another judgement has been issued with regard to such a participant or if any other intervention with similar effects has been undertaken by a public authority body, the rights and responsibilities of said participant arising from its participation in the system are subject to the same body of laws as that which the legal relationships between the participants in the system are subject to when carrying out clearance or settlement. The selection of a different body of laws is prohibited

(5) Foreign judgements in matters of bankruptcy proceedings are recognised under the condition of reciprocity, provided the debtor's main interests are concentrated in the foreign state in which said judgements have been issued and provided the debtor's property in the Czech Republic is not the subject of proceedings which have already commenced in accordance with subsection 2. In these cases and otherwise, if no proceedings have been commenced by a Czech court against the property which has become the subject of the bankruptcy proceedings abroad, the debtor's chattels which are located in the Czech Republic will be submitted to the foreign court upon request, provided this involves a court in a state which preserves the principle of reciprocity. The debtor's property may, however, only be sent abroad, once the rights for the exclusion of an item from the assets and the rights of the secured creditors which were acquired earlier than the request was received from the foreign court or from any other appropriate body have been satisfied.

CHAPTER II

THE BANKRUPTCY OF A FINANCIAL INSTITUTION

Section 112

(1) For the purposes of this Act, a financial institution means a bank, a savings bank or a credit union, a foreign bank, provided it enjoys the advantages of a uniform licence in accordance with European Union law in the case of subsections 2, 5 to 9 and 12 to 14, and a foreign bank from a state other than a European Union member state or a state which is part of the European Economic Area (hereafter simply referred to as a "member state") which has a branch in at least two member states.

(2) For the purposes of this Act, the bankruptcy of a financial institution is understood to mean a situation resolved:

a) by means of collective proceedings undertaken with regard to a financial institution,

commenced and monitored by the administrative or judicial bodies of a member state, whose aim is the sale of the property under the supervision of these bodies, including cases where the proceedings are concluded with the clearance of the debts or with any other measures with the same effect (hereafter simply referred to as the "bankruptcy proceedings"), or

b) by means of measures aimed at preserving or renewing the financial institution's stable financial situation and which may influence the already existing rights of third parties, including measures involving the option of suspending payments, suspending the recoverability of receivables, deferring measures associated with the enforcement of a judgement or the reduction of receivables (hereafter simply referred to as "reorganisation").

(3) Reorganisation is undertaken in accordance with the legal regulations and the procedures which are valid in the state where the financial institution was issued a licence or any similar authorisation, unless stated otherwise herein.

(4) The bankruptcy proceedings are undertaken in accordance with the legal regulations and the procedures which are valid in the state where the financial institution was issued a licence or a similar authorisation, unless stated otherwise herein, and especially as far as the following is concerned:

a) the property which forms part of the assets and the disposal of the property which the financial institution had acquired prior to the commencement of the bankruptcy proceedings,

b) the authorisation of the financial institution and the individuals administering the bankruptcy proceedings,

c) the conditions under which it is possible to set-off receivables,

d) the effects of the bankruptcy proceedings on the current contracts in which the financial institution is a party,

e) the effects of the bankruptcy proceedings on any judicial or arbitration proceedings being undertaken with the individual creditors, with the exception of proceedings undertaken in accordance with Section 114, subsection 2,

f) the receivables which must be registered as the property of the financial institution and the disposal of the receivables which have arisen after the commencement of the bankruptcy proceedings,

g) the rules regulating the registration, verification and securing the receivables,

h) the rules regulating the allocation of the revenues from the sale of the property, the designation of the order of the receivables and the rights of the creditors whose receivables have been partially satisfied since the commencement of the bankruptcy proceedings upon the basis of the *in rem* property rights or by means of crediting,

- i) the conditions for the termination of the bankruptcy proceedings and the consequences of the termination of the bankruptcy proceedings,
- j) the creditors' rights after the termination of the bankruptcy proceedings,
- k) the entity which is obliged to defray the costs and expenses associated with the bankruptcy proceedings, or
- l) the rules concerning the invalidity, ineffectiveness or contestability of the legal actions on the basis of the injury to creditors 7).

(5) The effects of the commencement of the bankruptcy proceedings and the reorganisation on:

- a) employment contracts and the employment relations are exclusively subject to the body of laws of the member state which is relevant for the employment contract,
- b) a contract which bestows the right to use or acquire a piece of real estate is exclusively subject to the body of laws of the member state in whose territory the real estate is located; the same body of laws is designated in the case of movable chattels and real estate,
- c) the rights to real estate, vessels or aircraft which are subject to registration in a public register are exclusively subject to the body of laws of the state in which the register in question is administered.

#### Section 113

(1) The exercising and enforcement of the rights to investment instruments, the existence or transfer of which presupposes their entry in a register, in an account or in a central deposit system which is administered or located in a member state is subject to the body of laws of that given state.

(2) Any final settlement agreements are exclusively subject to the body of laws which is relevant to the contract which regulates any such agreement.

(3) Without in any way affecting the provision of subsection 1:

- a) agreements on repurchase transactions are exclusively subject to the applicable law which is relevant for the contract which regulates any such agreement,
- b) transactions realised within the framework of a regulated market with investment instruments are exclusively subject to the body of laws which is relevant for the contract which regulates any such transactions.

(4) The provisions of Section 112, subsection 4 do not apply to the rules for the invalidity, ineffectiveness or contestability of any legal acts as a result of any injury to creditors, provided the entity which benefits from these acts can prove that:

- a) the actions which have injured the creditors are subject to the body of laws of a member state other than the state which issued the financial institution a licence or any such similar authorisation, and
- b) this law does not grant any means of contesting the legal actions in the given case.

(5) The provisions of Section 112, subsection 3 do not apply to the rules for the invalidity, ineffectiveness or contestability of any legal acts as a result of any injury to creditors arising from the legal regulation of the reorganisation which has been ruled on by a court, provided said legal acts were undertaken prior to its adoption and provided the entity which benefits from these acts can prove that:

- a) the actions which have injured the creditors are subject to the body of laws of a member state other than the state which issued the financial institution a licence or any such similar authorisation, and
- b) this body of laws does not admit any means of disputing the given legal actions in this case.

#### Section 114

(1) If a financial institution alienates:

- a) a piece of real estate,
- b) a vessel or aircraft which is subject to registration in a public register, or
- c) investment instruments or the rights to them, whose existence or transfer presupposes their registration in a register, in an account or in a central deposit system which is held or located in any member state,

as a consideration and does so by means of any actions undertaken after the commencement of the bankruptcy proceedings or the adoption of the reorganisation measures, the effects of any such actions will be subject to the body of laws of the member state in whose territory the real estate is located or in whose jurisdiction the register, account or deposit system is administered.

(2) The effects of the reorganisation or of bankruptcy proceedings on any ongoing court proceedings concerning the property values or rights which the financial institution has been relieved of are exclusively subject to the body of laws of the state in which the court proceedings are ongoing.

(3) The option of requesting crediting against the financial institution's receivables is subject to the body of laws which the financial institution's receivable is subject to; this does not affect the provisions of Section 112, subsection 4, letter l).

(4) The selection of a different body of laws is prohibited in the cases set out in subsections 1 to 3, in Section 112 subsections 3 to 5 and in Section 113.

### CHAPTER III

#### THE BANKRUPTCY OF AN INSURANCE COMPANY

#### Section 115

(1) According to this Act, the bankruptcy of an insurance company is understood to mean a situation resolved:

- a) by means of collective management, part of which includes the sale of the insurance company's assets and the allocation of the yield from the sale among the creditors, shareholders or partners, including any unavoidable intervention of the administrative and judicial bodies of the member state, including any cases where the collective proceedings are concluded by means of a settlement or any other similar measures regardless of whether this has or has not been caused by insolvency or whether it is voluntary or compulsory (hereafter simply referred to as "insolvency proceedings in the case of the bankruptcy of an insurance

company”), or

b) by means of measures, including any intervention by the administrative or judicial bodies of the member state, aimed at preserving or renewing a healthy financial situation in the entity and which may influence any already existing third party rights, including measures involving the option of suspending payments, suspending the recoverability of receivables, deferring any measures associated with the enforcement of a judgement or the reduction of receivables (hereafter simply referred to as “reorganisation measures in the case of the bankruptcy of an insurance company”).

(2) For the purposes of this Act, an insurance company is also understood to mean a branch of an insurance company, provided the registered office of the insurance company in question is not located within the territory of any of the member states and provided said insurance company has been authorised to carry out its activities in the member state in accordance with European Union law.

(3) The reorganisation measures in the case of the bankruptcy of an insurance company, including any branches thereof, are implemented in accordance with the legal regulations and procedures which are valid in the state where the insurance company was granted authorisation to carry out its activities, unless stated otherwise 8). The reorganisation measures do not prevent the commencement of bankruptcy proceedings. The reorganisation measures are effective in all of the member states as of the moment when they come into effect in the state according to the first sentence.

(4) Insolvency proceedings in the case of the bankruptcy of an insurance company take place in accordance with the legal regulations and procedures in the state where the insurance company was granted authorisation to carry out its activities, unless stated otherwise herein. This especially involves:

a) property which constitutes part of the assets and the disposal of property which the insurance company acquired or transferred after the commencement of the insolvency proceedings in the case of the bankruptcy of an insurance company,

b) the authorisation of the insurance company and the entity carrying out the bankruptcy,

c) the conditions under which it is possible to credit receivables against one another,

d) the effects of the insolvency proceedings on any current contracts, in which the insurance company is a party, in the case of the bankruptcy of an insurance company,

e) the effects of the insolvency proceedings on any judicial and arbitration proceedings held with individual creditors in the case of the bankruptcy of an insurance company, with the exception of the proceedings undertaken in accordance with Section 116, subsection 4,

f) any receivables which must be registered against the insurance company’s property and the disposal of the receivables which have arisen after the commencement of the insolvency proceedings in the case of the bankruptcy of an insurance company,

g) the rules regulating the registration, verification and securing of receivables,

h) the rules regulating the allocation of the yields from the sale of property and the designation of the order of the receivables and the rights of those creditors whose receivables have been partially settled upon the basis of *in rem* rights or by means of the crediting of receivables after the commencement of the insolvency proceedings in the case of the bankruptcy of an insurance company,

i) the conditions for the completion of the insolvency proceedings in the case of the bankruptcy of an insurance company and the consequences of the completion of the insolvency proceedings in the case of the bankruptcy of an insurance company, especially by means of settlement,

j) the rights of the creditors after the completion of the insolvency proceedings in the case of the bankruptcy of an insurance company,

k) the entity obliged to defray the costs and expenses in the case of the bankruptcy of an insurance company, or

l) the rules concerning the invalidity, ineffectiveness or contestability of the legal grounds based on damages incurred by the creditors.

(5) The effects of the reorganisation measures in the case of the bankruptcy of an insurance company or the commencement of insolvency proceedings in the case of the bankruptcy of an insurance company on:

a) employment contracts and employment relations and any corresponding relations are exclusively subject to the law of the member state which is decisive with regard to the given employment contract or employment relations,

b) a contract which authorises the use or acquisition of real estate is exclusively subject to the law of the member state in whose territory the real estate is located,

c) the rights to real estate, a vessel or an aircraft which is subject to registration in a public register is exclusively subject to the law of the member state in whose jurisdiction the register is administered.

#### Section 116

(1) Without in any way affecting the *in rem* rights of the creditors and any third parties with regard to property belonging to the debtor, the effects of any reorganisation measures in the case of the bankruptcy of an insurance company or the effects of any insolvency proceedings in the case of the bankruptcy of an insurance company on the rights and responsibilities of any entities in the regulated market are subject to the body of laws which applies to the given market. This does not in any way affect the use of the provisions of Section 115, subsection 4, letter l) in the case of any legal acts undertaken with the aim of deferring payments or transactions subject to the body of laws which applies to that market.

(2) The provisions of section 115, subsection 4, letter l) do not apply to the rules pertaining to the invalidity, ineffectiveness or contestability of any legal acts due to the incurrence of damages by the creditors, if the entity which has received benefit from any such acts can prove that:

a) the acts which have damaged the creditor are subject to the body of laws of a different member state than the state which issued the insurance company with official authorisation to carry out its activities, and

b) this body of laws does not permit any means of disputing the legal act in question in the given case.

(3) If an insurance company appropriates any of the following items as consideration after the adoption of the reorganisation measures in the case of the bankruptcy of an insurance company or after commencement of insolvency proceedings in the case of the bankruptcy of an insurance company:

a) real estate,

b) a vessel or aircraft subject to registration in a public register, or

c) investment securities or any other securities or the rights to them, their existence or the transfer thereof presupposing their registration in a register, an account or the central deposit system which is held or any member state,

the effects of any such acts will be subject to the body of laws of the member state in whose territory the real estate is located or under whose jurisdiction the register, account or central deposit system is administered.

(4) The effects of the reorganisation measures in the case of the bankruptcy of an insurance company on any ongoing judicial proceedings concerning the assets or the rights which the insurance company has been stripped of are exclusively subject to the body of laws of the member state in which the judicial proceedings are being held.

(5) The option of requesting the crediting of receivables against the debtor's receivables is subject to the body of laws which the debtor's receivable is subject to. This does not affect the provisions of Section 115, subsection 4, letter I).

(6) The selection of a different body of laws is prohibited in the cases set out in subsections 1 and 3 to 5 and in Section 115, subsections 3 to 5.

## **PART SEVEN**

### **ARBITRATION PROCEEDINGS AND THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRATION JUDGEMENTS**

#### Section 117

##### **Arbitration agreements**

(1) The admissibility of an arbitration contract is assessed in accordance with Czech law. The other requisites of the arbitration contract are assessed in accordance with the body of laws of the state in which the arbitration award is to be issued.

(2) The body of laws which applies to the other requisites of the arbitration contract also applies to the form of the arbitration contract. It is, however, sufficient, if the body of laws of the place or places where the statement of will took place is complied with.

#### Section 118

##### **The capacity of a foreigner to be an arbiter**

A foreigner may also perform the role of an arbiter, provided said foreigner has the capacity to undertake legal acts in accordance with the body of laws of the state in which he or she is a citizen. It is, however, sufficient, if said foreigner has the capacity to undertake legal acts under Czech law. The other requirements for the performance of the function of an arbiter designated for the resolution of disputes arising from consumer contracts are set out in a different legal regulation.

#### Section 119

##### **The designation of the applicable law**

The body of laws which applies to a dispute is the body of laws which has been selected by the parties. If the parties have not selected any such body of laws, it will be designated by the arbiters on the basis of the provisions of this Act. It is only possible to take into account the rules governing the conflicting laws, if this arises from the selection of the body of laws undertaken by the parties. If the parties have expressly authorised the arbiters to do so, the arbiters may rule on the dispute in accordance with the principles of fairness; if this involves disputes based on consumer contracts, the applicable law's consumer protection provisions must also be used. The provisions of Section 87, subsection 2 also apply to judgements reached in arbitration proceedings.

##### **The recognition and enforcement of foreign arbitration judgements**

#### Section 120

Arbitration judgements issued in a foreign state will be recognised and enforced in the Czech Republic as Czech arbitration judgements, if reciprocity is guaranteed. Reciprocity is also considered to have been guaranteed, if the foreign state generally declares that foreign judgements are enforceable under the condition of reciprocity.

#### Section 121

The recognition or enforcement of a foreign arbitration judgement will be refused, if the foreign arbitration judgement:

- a) is not final and conclusive or enforceable in accordance with the body of laws of the state in which it was published,
- b) has been repealed in the state in which it was issued or according to whose body of laws it has been issued,
- c) is subject to a defect which constitutes grounds for repealing a Czech arbitration judgement by the courts, or
- d) goes against public order.

#### Section 122

(1) The recognition of a foreign arbitration judgement is not expressed by means of a special judgement. A foreign judgement is recognised by means of the fact that it is taken into account as if it were a Czech judgement, while adhering to the provisions of Sections 120 and 121.

(2) The enforcement of a foreign arbitration judgement is subject to a judgement of a Czech court which must be duly justified.

## PART EIGHT

### THE TRANSITIONAL AND FINAL PROVISIONS

#### Section 123

##### The transitional provisions

(1) The establishment and existence of legal relationships and the facts arising from them prior to the date of this Act coming into effect, including the selection of the body of laws, are assessed according to the existing legal regulations. The provisions of this Act are also used for legal relationships arising prior to the date when it came into effect, if they are of a permanent, long-term nature and the participants have repeatedly or permanently acted within the framework of said relationships, or if the facts which were of significance for the relationship as of the date that the Act came into effect remain in place, provided the relationship involves any such actions or facts.

(2) The provisions of the existing legal regulations governing the jurisdiction of the Czech courts apply to proceedings commenced prior to this Act coming into effect. They also apply to proceedings concerning matters of the recognition and enforcement of foreign judgements and foreign arbitration judgements with regard to the conditions for their recognition and enforcement.

#### Section 124

##### The repeal provisions

The following regulations have been repealed:

1. Act no. [97/1963 Coll.](#) governing private and procedural international law
2. Act no. [361/2004 Coll.](#) which amends Act no. [97/1963 Coll.](#) governing private and procedural international law, as amended.
3. Article III of Act no. [158/1969 Coll.](#) which supplements and amends the Civil Procedure Code, the Notary Code and the Act governing private and procedural international law.
4. Article II of Act no. [234/1992 Coll.](#) which supplements and amends Family Act no. [94/1963 Coll.](#), as amended by Act no. [132/1982 Coll.](#)
5. Article V of Act no. [264/1992 Coll.](#), which supplements and amends the Civil Code, repeals the Act governing state notaries public and proceedings before a notary public (the Notary Code) and amends and supplements some other Acts.
6. Part one of Act no. [125/2002 Coll.](#) which amends some Acts in association with the adoption of the System of Payments Act.
7. Part four of no. [37/2004 Coll.](#) governing insurance policies and amendments to the associated Acts (the insurance Policy Act).
8. Part twenty-one of Act no. [257/2004 Coll.](#) which amends some Acts in association with the adoption of the Act governing commercial activities in the capital market, the Collective Investment Act and the Bond Act.
9. Part thirteen of Act no. [377/2005 Coll.](#) governing the supplementary supervision of banks, savings banks and credit unions, electronic money institutions, insurance companies and securities traders in financial conglomerates and the amendments to some other Acts (the Financial Conglomerates Act).
10. Part twenty-six of Act no. [57/2006 Coll.](#) governing the amendment of Acts in association with the unification of financial market supervision.
11. Part twenty-two of Act no. [70/2006 Coll.](#) which amends some Acts in association with the adoption of the Act governing the imposition of international sanctions.
12. Part two of Act no. [233/2006 Coll.](#) which amends Act no. [99/1963 Coll.](#), the Civil Procedure Code, as amended, and some other Acts.
13. Part four of Act no. [296/2007 Coll.](#) which amends Act no. [182/2006 Coll.](#) governing bankruptcy and the methods of resolving it (the Insolvency Act), as amended, and some Acts in association with its adoption.
14. Part two of Act no. [123/2008 Coll.](#) which amends Act no. [99/1963 Coll.](#), the Civil Procedure Code, as amended, Act no. [97/1963 Coll.](#) governing private and procedural international law, as amended and Act no. [549/1991 Coll.](#) governing court fees, as amended.
15. Part fifteen of Act no. [7/2009 Coll.](#) which amends Act no. [99/1963 Coll.](#), the Civil Procedure Code, as amended, and further associated Acts.
16. Section 4, subsection 2 and Part five of Act no. [216/1994 Coll.](#) governing arbitration proceedings and the enforcement of arbitration judgements
17. Article I, Part Four and Article II, Section Twelve of Bill and Cheque Act no. [191/1950 Coll.](#)
18. Part One of Act no. [409/2010 Coll.](#) governing an amendment in a number of Acts in association with the adoption of the Financial Security Act.
19. Part Three of Act no. [28/2011 Coll.](#) which amends Act no. [40/1964 Coll.](#), the Civil Code, as amended, and the other associated Acts.

## PART NINE

### EFFECTIVENESS

#### Section 125

This Act comes into effect on 1<sup>st</sup> January 2014.

**Němcová**

**Klaus**

**Nečas**

1) For example Regulation (EC) No. [593/2008](#) of the European Parliament and of the Council of 17th June 2008 on the law applicable to contractual obligations (Rome I), Regulation (EC) No. [864/2007](#) of the European Parliament and of the Council of 11<sup>th</sup> July 2007 on the law applicable to non-contractual obligations (Rome II), Council Regulation (EC) No. [44/2001](#) of 22<sup>nd</sup> December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, Council Regulation (EC) No. [2201/2003](#) of 27<sup>th</sup> November 2003 concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No. [1347/2000](#), Council Regulation (EC) No. [4/2009](#) of 18<sup>th</sup> December 2008 in jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matter relating to maintenance obligations, Council Decision [2009/941/ES](#) of 30<sup>th</sup> November 2009 on the conclusion by the European Community of the Hague Protocol of 23<sup>rd</sup> November 2007 on the Law Applicable to Maintenance Obligations, Council Regulation (EC) no. [1346/2000](#) of 29<sup>th</sup> May 2000 on insolvency proceedings.

2) Council Regulation (EC) No. [4/2009](#) of 18<sup>th</sup> December 2008 in jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matter relating to maintenance obligations.

Council Decision [2009/941/ES](#) of 30<sup>th</sup> November 2009 on the conclusion by the European Community of the Hague Protocol of 23<sup>rd</sup> November 2007 on the Law Applicable to Maintenance Obligations. The Protocol in the Law Applicable to Maintenance Obligations concluded in the Hague on 23<sup>rd</sup> November 2007, EU L 331, 16.12.2009, p. 19.

3) The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children concluded in Hague on 19<sup>th</sup> October 1996, published under no. [141/2001 Coll. m. s.](#)

4) Financial Security Act no. [408/2010 Coll.](#)

5) Regulation (EC) No. [593/2008](#) of the European Parliament and of the Council of 17th June 2008 on the law applicable to contractual obligations (Rome I), Regulation (EC) No. [864/2007](#) of the European Parliament and of the Council of 11<sup>th</sup> July 2007 on the law applicable to non-contractual obligations (Rome II), Council Regulation (EC) No. [44/2001](#) of 22<sup>nd</sup> December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, the Convention on the Law Applicable to Traffic Accidents concluded in Hague on 4<sup>th</sup> May 1971 published under no. [130/1976 Coll.](#), the Vienna Convention on Civil Liability for Nuclear Damage adopted in Vienna on 21<sup>st</sup> May 1963 with the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention adopted in Vienna on 21<sup>st</sup> September 1988, published under no. [133/1994 Coll.](#)

6) Council Regulation (EC) No. [1346/2000](#) dated 29<sup>th</sup> May 2000 on insolvency proceedings.

7) Directive No. [2001/24/EC](#) of the European Parliament and of the Council of 4<sup>th</sup> April 2001 on the reorganisation and winding up of credit institutions.

8) Directive No. [2009/138/ES](#) of the European Parliament and of the Council of 25<sup>th</sup> November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).