

**FDI Guide
Czech Republic**

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Czech Republic
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <ul style="list-style-type: none"> The Treaty on EU applicable to the Czech Republic guarantees the principle of free movement of capital between Member States of the EU and third countries. The principle has direct effect, meaning that it requires no further legislation at either EU or Member State level. The Czech Republic has been an EU member since 2004. In accordance with Article 65 of the Treaty on the Functioning of the EU exceptions nevertheless exist, including, inter alia, measures grounded on public policy or public security. Based on this exception principle and in response to Regulation (EU) 2019/452 establishing a framework of screening of FDI throughout the EU, the Czech Republic implemented FDI screening procedures by means of Act No 34/2021 Coll: the Foreign Direct Investment Act (the ‘FDI Act’).

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2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules.	The FDI Act, passed by the Czech Parliament in January 2021, was effective from 1 May 2021, and sets out Czech foreign investment screening rules. The supervising authority in charge of applying the Czech FDI rules is the Czech Ministry of Industry and Trade.
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	Describe the nature of the transactions that may be subject to FDI rules. In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.	<p>The Czech FDI Act introduces a level of vigorous screening for non-EU foreign investment in the Czech Republic that meets the below conditions. There are no monetary thresholds per se.</p> <p>Who is deemed to be a foreign investor?</p> <p>A foreign investor is any person or legal entity from outside the EU that makes an investment in the Czech Republic, or a person or legal entity who is established in the EU but is directly or indirectly controlled by a person/entity from outside the EU. The definition of foreign investor also includes investors from the United Kingdom, Switzerland, Liechtenstein and Norway.</p> <p>What constitutes foreign investment for the Czech FDI rules?</p> <p>The Czech FDI rules are aimed at investments that provide the foreign investor with ‘effective control’ of the Czech target.</p> <p>‘Effective control’ is defined broadly to encompass:</p> <ul style="list-style-type: none"> • acquisition of a stake of at least ten per cent of voting rights in the target; • membership of the foreign investor (or a related party) in the statutory bodies of the target; • ownership of assets used by the target to perform its business activities; or • any other form of control that gives the foreign investor access to information, systems or technology that are vital for the protection of the security of the Czech Republic or its public safety and order. <p>It is important to note that the acquisition of a shareholding is not essential to trigger the FDI rules; fulfilment of <i>any one of the above conditions</i> is deemed ‘effective control’.</p>
		Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions	Any transaction that meets the requirements of providing ‘effective control’ of a Czech target by a foreign investor (as described in point 3 above) is subject to the Czech FDI rules. The definition of ‘foreign investment’ may potentially include indirect acquisitions, both share and

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		<p>in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>asset deals, greenfield investments, expansions of existing businesses and potentially even internal intra-group restructuring, if the relevant conditions are met.</p> <p>Whether an investment falls within the meaning of ‘pursuing an economic activity in the Czech Republic’ is assessed on a case-by-case basis.</p>
		<p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>Czech authorities (principally the Ministry of Trade and Industry or the ‘Ministry’) are entitled to monitor transactions carried out in the Czech Republic and to require that the Czech FDI rules be complied with if a given transaction falling within its scope is not properly referred to them. The Ministry also has a power for discretionary retroactive review up to five years after completion on any foreign investment with the potential to affect the ‘security of the Czech Republic or its public order and safety’, unless consultation proceedings carried out by the Ministry based on the foreign investor’s request and in accordance with the FDI Act have ruled out any potential to affect security, public order or public safety.</p>
	<p>Sectors falling under the FDI scope</p>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>Pursuant to the Czech FDI rules, investments conferring effective control (as described above) are subject to mandatory notification where the relevant sector is in one or more of the following:</p> <ol style="list-style-type: none"> 1. manufacturing, research, development, innovation or arranging for a life cycle of arms and military equipment; 2. operations of critical infrastructure (including infrastructure related to energy, water management, food and agriculture, healthcare, transportation, communication and IT systems, financial markets, emergency services or public administration); 3. administration of the information or communication system of critical information infrastructure or an essential service, or operation of an essential service; or 4. manufacturing or development of dual-use items (ie, items that may be used for both civilian and military purposes) set out in Annex IV of the Council Regulation (EC) No 428/2009.

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			<p>Mandatory notification to the Ministry also applies under the Czech FDI rules for certain foreign investment in the media sector. Specifically, a foreign investor must file a request for consultation if the target meets one of the following criteria in this sector:</p> <ol style="list-style-type: none"> 1. the target holds a nationwide radio or television broadcasting licence; or 2. the target publishes a print media publication with an aggregate average printed circulation of at least 100,000 copies per day. <p>The Ministry can also initiate proceedings in relation to any foreign investment with the potential to affect the ‘security of the Czech Republic or its public order and safety’, unless consultation proceedings carried out by the Ministry based on the foreign investor’s request and in accordance with the FDI Act have ruled out any potential to affect security, public order or public safety.</p>
4.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	The Czech FDI rules apply only to foreign investment made in the Czech Republic by a foreign investor, that is, a person that is not a national of, and does not have its registered office in, an EU Member State. Foreign investors by definition under the FDI Act may also be companies from the EU if their directly or indirectly controlling person comes from a third state. This also applies to trusts and similar foreign structures if the founder, trustee or beneficiary meets the definition of a foreign investor. The definition of foreign investor also includes investors from Liechtenstein, Norway, Switzerland and the UK.
5.	Procedure 6.1 Before or post-closing filing		As a principle, if a planned investment falls within the scope of the Czech FDI rules and fulfils the requirements for mandatory notification, the clearance of the Ministry (which may be subject to conditions) shall be required (and obtained) and the transaction cannot be finalised prior to such clearance, which is a pre-closing condition.
6.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p>It is mandatory to file a request for clearance before the completion of the investment within the scope of the Czech FDI rules if the proposed transaction fulfils the requirements for mandatory notification.</p> <p>Foreign investment clearance should therefore be a closing condition precedent to the completion of the transaction.</p>
7.	6.3 In the case of post-closing, what are the powers of the authority?		Not applicable (pre-filing is mandatory) if the requirements for mandatory notification are fulfilled.

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			In the case of foreign investment with the potential to affect the ‘security of the Czech Republic or its public order and safety’, the Ministry has the power to conduct a discretionary retroactive review up to five years after the completion of any foreign investment, unless consultation proceedings carried out by the Ministry based on the foreign investor’s request and in accordance with the FDI Act have ruled out any potential to affect security, public order or public safety. Based on the retroactive review proceedings, the Ministry can prohibit further duration of the foreign investment, prohibit or restrict the right to exercise voting rights or shares ownership rights or require a forced sale of the foreign investor’s rights within a certain time period. If a forced sale does not occur, the Ministry can procure a sale on its own at a public auction or using a securities trader or licensed foreign investment services provider in the Czech Republic.
8.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>Foreign investors may seek a <i>voluntary consultation</i> with the Ministry in order to obtain a decision by the Ministry if the specific foreign investment is to be subject to screening; such a consultation removes the possibility of a later ex officio review by the Ministry of the same investment, assuming that complete and truthful information was provided. Such a voluntary consultation provides legal certainty to investors seeking clarity about the application of the new Czech FDI rules and assurance that their investment will not be subject to later review.</p> <p>Process for a voluntary consultation (also the same for a mandatory notification)</p> <p>Request for the approval of foreign investment or a consultation proposal is to be submitted in the Czech language using a form specified by Government Decree No 178/2021 Coll, signed by a statutory representative of the applicant.</p> <p>To apply for the approval of foreign investment or to propose a consultation, the applicant shall use the form in .docx format, which can be submitted by electronic data mailbox to the Ministry.</p> <p>Together with the application for the approval of foreign investment, the applicant shall submit a questionnaire with additional information about the foreign investment. This allows for the time-efficient assessment of the application, as well as for the execution of commitments in accord with Article 6 of Regulation (EU) 2019/452 of the European Parliament and the Council, which establishes a framework for information exchange and cooperation in the screening of foreign investment directed to the EU. The applicant shall submit this questionnaire in the English language.</p> <p>The maximum statutory time period for a consultation proposal is 45 days.</p> <p>If, based on the consultation proceedings, the Ministry finds out that the transaction has the potential to affect the ‘security of the Czech Republic or its public order and safety’, the</p>

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			Ministry will initiate standard screening proceedings; otherwise, it will decide that there are no grounds to initiate the screening proceedings. In such a case, screening proceedings in relation to the same foreign investment cannot be initiated in the future (even retroactively).
9.	6.5 Timing of various steps (i) Filing	How much lead time is required?	According to the FDI Act, there is no specific deadline for the notification of the relevant screening body (the Ministry). Valid permission is, however, condition precedent to the transaction if the requirements for mandatory notification are fulfilled.
10.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	<p>The screening periods are as follows:</p> <ul style="list-style-type: none"> • screening of foreign investment that was not found to pose a risk: 90 days; and • screening of investment that has been identified as risk-prone, including the referral to and discussion by the government of the Czech Republic: 135 days. <p>These dates can be prolonged by 30 days in complicated cases. In cases specified by law (eg, negotiations about conditions and mitigation measures) the proceeding can be paused.</p>
11.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>As the new Czech FDI rules have only been in effect since May 2021, practical experience with the role of the Ministry in the negotiation and approval process is still very limited. It is expected that, at least in the initial years, it is highly likely that there will be a large number of consultations with the Ministry to rule out any doubt about the nature of particular transactions. The Ministry has indicated that it will consider the security aspect as the key to assessing a transaction. It remains to be seen in the absence of specific criteria for assessing security risk how this may be interpreted in practice.</p> <p>Our experience with Czech FDI proceedings so far has shown that these expectations have been met. The Ministry tends, in both consultation and screening proceedings, to act very prudently and use all available deadlines, in full, for taking decisions. Moreover, when the deadlines are approaching, the Ministry has also extended them in some cases by asking for additional information shortly before the deadlines expire (in such cases, the deadlines automatically extend). Also, when the Ministry decides, based on consultation proceedings, to initiate screening proceedings, it does not give sufficient arguments that provide its reasoning for such decisions.</p> <p>To summarise, the duration of proceedings cannot be guaranteed, even in cases that look straightforward, and foreign investors should count on the Ministry to use the maximum available time period for making the decision and having the condition precedent satisfied. To prevent the proceedings from being unnecessarily long, foreign investors should seek to</p>

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			provide as much information as possible when filing the application; this may help in ensuring that the Ministry does not ask additional questions shortly before the deadline expires.
		Are there any guidelines issued by the authority?	There are no formal guidelines or guidance available currently to provide insight into how the Ministry processes applications. Nevertheless, the Ministry offers informal guidance and information on its website and encourages investors to send it questions via the email address: fdi-screening@mpo.cz .
12.	(iv) Filing fees	Is there a filing fee?	No filing fees are applicable.
13.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>Each filing must include the following information:</p> <ul style="list-style-type: none"> • information about the foreign investor (eg, name, registered office, jurisdiction of establishment and registration number); • information about the members of the foreign investor’s statutory body, supervisory body or other body (eg, name, address, and date and place of birth); • information about the ownership structure of the foreign investor, including information about the final investor and the person who controls the foreign investor, his or her share and any changes in this information in the past year; • information about the business activities of the foreign investor and the place of business (including, eg, list of customers); • information about the scope of the foreign investment (eg, the source and amount of financing, and the timeframe of the investment); • information about the transaction’s financing; and • information about the target company (eg, name, registered office, registration number, information about the ownership structure, business activities and place of business, including, eg, list of customers). <p>The filing for the request for the approval of foreign investment or a consultation proposal is to be submitted in the Czech language using a form specified by Government Decree No 178/2021 Coll, signed by a statutory representative of the applicant.</p>

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			<p>To apply for the approval of foreign investment or to propose a consultation, the applicant shall use the form in .docx format, which the applicant can subsequently send in .pdf format to a data box of the Ministry: bxtaaw4.</p> <p>Together with the application for the approval of foreign investment, the applicant shall submit a questionnaire with additional information about the foreign investment. This allows for the time-efficient assessment of the application, as well as for the execution of commitments in accordance with Article 6 of Regulation (EU) 2019/452 of the European Parliament and the Council, which establishes a framework for information exchange and cooperation in the screening of foreign investment directed to the EU. The applicant shall submit this questionnaire in the English language.</p>
14.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	<p>The timing of the screening period and final decision is as follows:</p> <ul style="list-style-type: none"> • consultation proceedings: 45 days; • screening of foreign investment that was not found to pose a risk: 90 days; and • screening of investment that has been identified as risk-prone, including the referral to and discussion by the government of the Czech Republic: 135 days. <p>These dates can be prolonged by 30 days in complicated cases. In cases specified by law (eg, negotiations about conditions and mitigation measures) the proceeding can be paused.</p>
15.	<p>Conditionality of approval</p> <p>(i) Type of conditions or commitments</p>	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>A negative decision is possible if the Ministry or any of the mandatory consulted institutions assesses the FDI as high-risk.</p> <p>Risk can be substantially reduced by the agreement upon mitigating measures.</p> <p>If there is no agreement on mitigating measures for a transaction deemed high risk, then no permission is granted (for screening before the FDI is completed).</p> <p>If the FDI has already taken place, an order to divest may be given.</p> <p>Such a case is referred to the Czech Government which makes the ultimate decision.</p>
16.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to	Given the short period that the FDI rules have been in effect (since May 2021), examples of case practice in exceptional circumstances are not yet generally known (if they have in fact already occurred). The Ministry has the power to agree on mitigating conditions and

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		the use of such discretionary power.	circumstances to allow an otherwise prohibited investment to proceed under certain circumstances. The ultimate decision lies with the Czech Government in sensitive cases.
17.	(iii) Risk of veto	Describe a topical case. Statistics	The FDI Act has only been in operation since May 2021 and thus experience is still limited. A veto is possible, but generally considered to be rare, as in most cases, it is thought there would be an effect by the Ministry to agree on mitigating conditions to the investment in order to avoid an outright veto.
18.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	FDI screening is conducted by the Ministry of Industry and Trade. Other Czech institutions that are consulted by the Ministry on a mandatory basis are the Ministry of Defence, Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Finance, Czech Police and intelligence services. Other ad hoc consultation may occur with relevant institutions, such as the Czech National Bank or National Cyber and Information Security Agency (NCISA). If no risk is identified, the Ministry of Industry and Trade issues a positive decision.
19.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	<p>According to the FDI Act, the foreign investor will be subject to sanctions if:</p> <ol style="list-style-type: none"> 1. the foreign investor fails to comply with the obligation imposed by the decision prohibiting the continuation of the FDI; 2. the foreign investor does not meet the conditions imposed by the decision on the conditional authorisation of the FDI or the decision on conditional admissibility of the FDI; 3. the foreign investor makes the FDI without making an application for permission of the FDI; or 4. the foreign investor does not submit a request for consultation where the target person holds a licence for a national radio or television broadcast, or a periodical publisher with a combined minimum printed cost of 100,000 copies per day for the last calendar year. <p>For the offences in 1 and 2, a fine can be imposed of up to two per cent of the total net turnover achieved by a foreign investor for the last completed financial year, or from CZK 100,000 to CZK 100m if the amount of total net turnover achieved by the foreign investor for the last completed financial year cannot be determined.</p> <p>For the offences in 3 and 4, a fine can be imposed of up to one per cent of the total net turnover achieved by the foreign investor for the last completed financial year, or from</p>

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			<p>CZK 50,000 to CZK 50m if the amount of total net turnover achieved by the foreign investor for the last completed financial year cannot be determined.</p> <p>Apart from the sanctions mentioned above, prohibitions and divestment obligations can be imposed – see above.</p>
		<ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and 	<p>If the foreign investor proceeds with the transaction irrespective of a negative decision by the Ministry or fails to uphold certain conditions imposed in the decision by the Ministry, the fine can be up to two per cent of total net turnover for the latest accounting period or up to CZK 100m if the turnover cannot be calculated.</p>
		<ul style="list-style-type: none"> • investment carried out without prior approval. 	<p>If the foreign investor fails to provide notification of the transaction or request a mandatory consultation, the applicable penalty can be up to one per cent of total net turnover for the latest accounting period or up to CZK 50m if the turnover cannot be calculated.</p>
20.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic	<p>There was no official information or announcement about tightening the Czech FDI rules due to the Covid-19 pandemic. During the height of the Covid-19 pandemic, there were restrictions on the entry of non-Czech citizens to the Czech Republic, but this was in relation to public health measures, not FDI rules.</p>