

DEBT RECOVERY IN THE CZECH REPUBLIC
Czerwenka & Partner v.o.s.

Prior to initiating legal action

Essential information required

Prior to the commencement of the recovery of any debt, the following must be obtained:

- precise names and surnames or the company names of the creditor and the debtor;
- written agreement executed by them (if there is such an agreement);
- the general terms and conditions regulating their relation (if there are any);
- the order;
- the order confirmation;
- the bill of delivery;
- the invoice;
- correspondence between the parties.

If all of these documents are not available, the debt may, of course, be exacted on the basis of only some of them.

Checks available to establish if the debtor is worth suing

There are several companies which provide this kind of service. Such companies, however, usually use only the publicly accessible sources of information (the Land Registry, the Commercial Register, the collection of deeds of a commercial register, etc.) Consequently, the results of such inquiries are not very useful in the case of natural persons and small companies.

Enforcement of a retention-of-title clause

Under Czech law, contracting parties may agree on the reservation of title. If, however, the debtor sells the goods to a third party regardless of the reservation of title, such a third party, as a rule, becomes the owner of the goods and the creditor (the previous owner of the goods) may not apply the reservation of title toward such a third party. Therefore, the application of the reservation of title is limited and may be used only as long as the goods are still in the possession of the debtor.

Pre-judgment remedy

Under Czech procedural law, a court may, upon a motion filed by the creditor, issue a pre-judgment remedy (preliminary ruling), even before an action is brought against the debtor. However, this is conditioned upon the creditor attesting that there is a risk of threat to the judicial execution of a decision. The courts are very strict in deciding

DEBT RECOVERY IN THE CZECH REPUBLIC
Czerwenka & Partner v.o.s.

whether this condition is met. The court must decide upon the petition for the issue of a preliminary ruling within seven days. The court may use the pre-judgment remedy, above all, to impose upon the debtor the duty to: place an amount of money or an item of property into the custody of the court; not dispose of particular items of property or rights; carry out something; refrain from acting; or suffer something. The court may also order a bank to make it impossible for the debtor to dispose of the financial reserves in the debtor's account.

Letter before action/telephone collection

Debt collection by telephone is not customary in the Czech Republic. Although giving a notice to the debtor does not constitute a precondition for bringing an action against the debtor, the creditor usually sends one or two notices to the debtor before bringing the action. The last notice is usually sent by the creditor's legal representative. In some cases (especially with regard to creditors from abroad), the official letter by the legal representative is, in itself, sufficient for the recovery of a debt. This is because the creditor clearly indicates that he or she has decided to bring an action against the debtor.

If the debtor does not have sufficient financial means for immediate payment of the entire debt, it may sometimes be useful to offer the possibility of paying off the debt in installments under the following conditions:

- the debtor acknowledges his or her debt by means of a notarial deed; and
- the installment plan becomes a part of the notarial deed, with the debtor expressing in it his or her agreement with the direct enforceability of such a notarial deed.

This procedure has the following advantages for the creditor:

- the burden of proving the existence of the debt and its amount passes to the debtor;
- a new limitation period of 10 years (if the legal relation is regulated by the Civil Code) or four years (if the legal relation is regulated by the Commercial Code) is commenced;
- the notarial deed is directly enforceable (in the same manner as a final and conclusive court judgment). This may save the creditor several years which are otherwise typically necessary for securing a final and conclusive judicial decision against the debtor.

DEBT RECOVERY IN THE CZECH REPUBLIC
Czerwenka & Partner v.o.s.

Claiming interest

Interest on late payment, forming a part of the debt, is recovered together with the debt. The amount of interest may be agreed upon by the parties. If not, the provisions of Czech law shall apply, setting the interest on late payment at double the discount rate issued by the Czech National Bank for the day on which the debtor defaulted on his or her payment. The amount of the discount rate may be found at the Czech National Bank website <http://www.cnb.cz/en/index.html>.

Legal Proceedings

Judicial order to pay

If the creditor's efforts to enforce an out-of-court payment of the debt fail, legal action is typically taken against the debtor. If the documents submitted together with the legal action acknowledge the creditor's claim, the court usually issues a "judicial order to pay," even if the creditor has not expressly requested the issue of such an order. Czech procedural law does not specify any time limit for the court to issue a judicial order to pay, but this typically takes several months. The court issues the judicial order to pay without hearing the debtor (i.e., the defendant) and without ordering a hearing. The judicial order to pay requires the debtor to pay the amount sued for, together with accessions (mainly interest on late payments) and the costs of the proceedings, to the creditor, or to file a protest against the judicial order to pay within fifteen days of being served with the judicial order. If the debtor does not file a protest within the specified period of time, the judicial order to pay becomes final and conclusive and, in the event that it is not carried out voluntarily, it may serve as a basis for the order of an execution against the debtor.

If the debtor files a protest against the judicial order to pay, the judicial order to pay is cancelled and the usual court proceedings follow. The judicial order to pay is cancelled regardless of whether the debtor raised any objections in his or her protest against the creditor's claims stated in the claim or the nature of the objections.

Usual court proceedings

If the debtor files a protest against the judicial order to pay, or if the court decides not to issue the judicial order to pay, the usual court proceedings follow. The court will serve the claim upon the debtor, asking him to make a statement regarding the claim and offer evidence in support of his or her statement. The first hearing is then ordered, usually within a year after the action is brought (this period may, however, be considerably longer or shorter in different courts). In some specific cases, the court may also issue a

DEBT RECOVERY IN THE CZECH REPUBLIC

Czerwenka & Partner v.o.s.

judgment of recognition or a judgment in default, even if both parties were not present at the court hearing.

Appeal, extraordinary remedial measures

The decision of the first instance court may be appealed to a second-instance court within 15 days after the service of the written form of the judgment. The period of time between the appeal and the order to hear the case in the appeal court is usually another year. The judgment of the second-instance court is final, conclusive, and enforceable, with the exception of a judgment of the appeal court which quashes the first-instance court judgment and returns the matter to the first-instance court for further hearing. Even in the case of a final and conclusive judgment, there is a possibility to file an application for an extraordinary remedial measure, which may, under certain circumstances, involve the postponement of the enforcement of the final and conclusive judgment. The entire proceedings will then take even longer.

Limitation

Under Czech law, limitation of actions is provided for differently in the Civil Code (the general limitation period being three years) and the Commercial Code (the general limitation period being four years). Generally speaking, the Civil Code regulates both the legal relations between natural persons, and the legal relations between businesses and natural persons (customers). There are many exceptions to this general rule. In the event of an international recovery of debts, one is usually faced with the legal relations between businesses, for which the provisions of the Commercial Code concerning limitation will therefore be used.

The general limitation period under the Commercial Code is four years. The limitation period stops when the creditor, in order to satisfy or determine his or her right, takes any legal action which is considered, under the guidelines regulating judicial proceedings, as the commencement of judicial proceedings or as the exercise of a right in the proceedings which have already started. The same holds for arbitration proceedings. If the debtor acknowledges his or her debt in writing, a new limitation period of four years commences on the day such an acknowledgment is made.

Insolvency

In the event of the debtor being insolvent, a court may, when all the prescribed conditions are met, adjudicate the debtor's property bankrupt. A petition for bankruptcy may be filed by both the creditor and the debtor him or herself. The basic prerequisite for the adjudication of bankruptcy is that the debtor has not, for some time, been paying

DEBT RECOVERY IN THE CZECH REPUBLIC

Czerwenka & Partner v.o.s.

his or her debts as they fall due and, at the same time, there are several creditors. If the petition in bankruptcy is filed by a creditor, the creditor must provide documentation about such facts and pay an advance fee set out by the court to cover the costs of the bankruptcy (up to the amount of CZK 50,000, i.e., €1,666).

Together with adjudicating the debtor's property bankrupt, the court also specifies the period of time in which to report one's claims. There is no fee to pay for the reporting of one's claims. A "review proceeding" is conducted regarding the claims which have been reported, in which the receiver in bankruptcy or other creditors may deny particular claims. In that case, there is a special court proceeding about the existence of such claims.

The bankruptcy proceedings typically take several years. Claims are satisfied only partially. If the claim is not secured by, security interest for example, then the creditor will recover only a small part of his or her claim after the bankruptcy proceedings are closed.

Unlike the ordinary judicial proceedings, the creditor in the bankruptcy proceedings is not entitled to recover costs incurred in connection with reporting his or her claim and his or her further representation in the bankruptcy proceedings.

Recognition of foreign judgments

Due to European Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters foreign judgments issued within Member States of the European Union with the exception of Denmark are recognized in other Member States without any special procedure being required.

A judgment given in a Member State and enforceable in that State shall be enforced in the Czech Republic, on the application of any interested party, when it has been declared enforceable there. The application shall be submitted to the competent court.

Although Czech law essentially provides for the recognition of judgments delivered by foreign courts outside Member States of the European Union, in practice, this occurs only if there is a bilateral treaty between the Czech Republic and the relevant country in which such a recognition of judicial judgments has been agreed upon (e.g., between the Czech Republic and Russian Federation) or, in the event of no such treaty, if there is reciprocity. The declaration of whether there is reciprocity with a specific country is issued by the Ministry of Justice.

DEBT RECOVERY IN THE CZECH REPUBLIC

Czerwenka & Partner v.o.s.

In the event of foreign judgments being recognized, the recognition of such a foreign judgment with regard to property suits is not made by means of a particular statement. The foreign judgment is recognized when a Czech body takes such a judgment into account in the same manner as if it were a judgment issued by a relevant body of the Czech Republic.

The Czech Republic is also a signatory to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

Enforcing the Judgment

The final and conclusive judicial decisions, the final and conclusive awards of arbitration courts, and the agreements concluded by means of a notarial deed with a clause about direct enforcement are enforceable, unless performed voluntarily. Under Czech law, the judgment may currently be enforced in two ways:

- by means of the court (usually more time consuming);
- by means of private executors (usually more effective).

Enforcement Costs

Enforcement by a court. The court fee is CZK 300 (approx. €10) for amounts of compulsory payment not exceeding CZK 15,000 (€500). The fee is 2%, up to the maximum amount of CZK 50,000 (€1,670) for amounts of compulsory payment exceeding CZK 15,000 (€500). In other cases, the fee is CZK 1,000 (€33). The creditor must pay the fee regardless of whether the court succeeds in recovering the whole or a part of the debt. The debtor is obliged to pay (reimburse) to the creditor the fees for the execution.

Enforcement by a private executor. The creditor is obliged to pay, for the performance of the execution requiring the payment of an amount under CZK 3 million (€100,000), a fee of 15%. An additional 10% is paid for excess amounts up to CZK 40 million (€1,333,333) An additional 5% is paid for excess amounts up to CZK 50 million (€1,666,666), and an additional 1% is paid for excess amounts up to CZK 250 million (€8,333,333). Unlike the enforcement of the judgment by means of the court, the creditor is obliged to pay the above-mentioned fee only on the basis of the amount that the executor actually manages to recover. The minimum fee is CZK 3,000 (€100). Prior to starting the execution, executors usually require an advance payment.

On top of the above-described executor's fees, an additional remuneration for the executor's performance may be agreed upon in the agreement between a private

DEBT RECOVERY IN THE CZECH REPUBLIC
Czerwenka & Partner v.o.s.

executor and the creditor. However, the creditor is not entitled to be reimbursed for this remuneration by the debtor.

Legal fees

The legal fees may be set in two ways:

- as an hourly rate of the attorney-at-law or the law firm (the total amount of the fees is thus dependent on the time spent);
- as a percentage of the value of a thing (the amount of the debt). The percentage rate is set either by the attorney-at-law (the law firm) or by reference to the attorneys' tariff issued by the Czech Bar Chamber.

Czech attorneys may also negotiate a reasonable contingency fee (i.e., to make the amount of the legal fees dependent upon a successful outcome in the case or based on a percentage of the amount recovered).

Legal costs

Under Czech procedural law, the costs of the proceedings consist, above all, of cash expenses of the parties and their legal representatives, including court fees, costs of evidence, court interpreter fees and attorney's fees. Each party pays their own costs of the proceedings arising to themselves and their attorney. Together with deciding about the matter itself, the court decides whether, and to what extent, it will impose on one party the obligation to cover the costs of the other party. The court bases its decision mainly on the principle of the success in the suit (i.e., the party which is 100% successful in the suit is essentially entitled to have all its costs of the proceedings reimbursed by the party which was unsuccessful in the suit). If one of the parties is only partially successful, it is only entitled to the payment of a proportionate amount of its costs of the proceedings. In certain cases, the court may also rule that none of the parties are entitled to the recovery of their costs of the proceedings, regardless of the result of the suit.

With regard to the recovery of the costs of legal representation, such costs are, under Czech procedural law, paid as a lump sum (usually according to the value of the suit) for the entire proceedings at a particular level (i.e., regardless of what the real costs for legal representation of a party are). Generally speaking, if the attorney-at-law charges his or her fees using an hourly rate, such fees are paid in full if the suit has a high value. In the event of a suit with a low value, even if the suit is fully successful, the amount of payment of the costs of proceedings awarded need not fully cover the costs of the legal representation.

DEBT RECOVERY IN THE CZECH REPUBLIC
Czerwenka & Partner v.o.s.

Debt recovery in the Czech Republic

The length of the debt recovery proceedings varies according to individual courts and even individual judges within the same court. On average 3 months are required until a judicial order to pay is issued, additional 6 months to 2 years until the court of first instance delivers the verdict and additional 1 – 3 years until the court of appeal decides on the appeal. Enforcement of a final and conclusive judgment takes at least 4 months. The court fee payable upon filing of the action amounts to 4 % of the claimed amount. The legal fees depend on the time spent; the average fee for filing an action is in the region of CZK 8,000 – 18,000, i.e. € 240 - 545. The fees for representation at court are charged according to the number and length of the court hearings.