

REAL ESTATE INVESTMENTS IN THE CZECH REPUBLIC AFTER BREXIT

Q&A on legal issues that regularly arise in the course of real estate transactions after a “hard Brexit” (a Brexit without an agreement between the UK and the EU)



1 Will a hard Brexit - a no-deal Brexit - mean obstacles to acquisition of real estate assets by British investors?

Czech law currently imposes no restrictions on acquisition of real estate assets by foreign citizens or companies. The right of British citizens and companies to purchase land or existing constructions in the Czech Republic (asset deals) will not be affected by a hard Brexit.

2 Will there be any obstacle for British citizens or companies to acquire shares in a Czech company?

Again, there is no restriction in Czech corporate law for foreign citizens or companies to incorporate a Czech company or to acquire shares in an existing Czech company. A real estate transaction taking the form of a share deal (acquisition of shares in a real estate holding company) will not be affected by a hard Brexit. In some cases, the transfer of shares will need to be registered with the Czech Commercial Register (the same will always be the case if the company is to be newly incorporated).

3 What taxes will be payable by British investors following Brexit?

Acquisition of real estate is subject to a special 4 % tax payable by the purchaser. Any owner of land is required to pay real estate tax. Both taxes are payable by land owners irrespective of their nationality or place of incorporation. Brexit will have no impact on these taxes. Sale of land or company shares is often subject to profit tax as well as VAT. Both taxes are payable by the seller. The purchaser may become statutorily liable for payment of VAT instead of the seller (if the seller defaults on payment). This issue needs to be addressed in the transaction documentation.

4 Will British investments in the Czech Republic be controlled in any way?

A new law on control of foreign direct investments (namely investments by non-EU citizens and companies as well as investments by EU companies controlled by non-EU companies or citizens) is currently pending approval by the Czech government and Parliament. Under the act, investments in real estate assets which are important for defence or the internal affairs of the Czech Republic may become subject to scrutiny by the Czech authorities within 5 years after their completion (the deadline will only apply to investments completed after the law is passed). No prior approval is expected to be required for completion of an investment in real estate itself, except for crucial

infrastructure projects. In general, the investor will be entitled to ask for a preliminary review of the investment.

5 Will Brexit restrict investment in real estate funds in the Czech Republic?

Czech law on investment funds allows investments in real estate investment funds holding real estate (either directly or through shares in a real estate holding company). These investments are not restricted to Czech/EU citizens or companies incorporated within the EU. This means that British investments in Czech real estate investment funds will not be restricted as a result of Brexit; certain tasks relating to investment fund business and administration are, however, reserved for EU entities only or a non-EU entity may be obliged to prove that it is governed by rules equivalent to EU legislation in its country of incorporation.

6 Will Brexit impact the use of documents issued in GB for the purposes of completing or registering a transaction with the Czech authorities?

Both the Czech Republic and the UK are currently bound by the Hague Convention (of 5 October 1961) Abolishing the Requirement of Legalisation for Foreign Public Documents. Under the Convention official documents issued by courts, administrative authorities or notaries in one country (including official certification of signatures) are recognized in a second country as long as an Hague apostille is attached to them. An Hague apostille is issued by the designated authority in each country (an authority may attach apostille only to documents issued within its territory only). This regime will continue to apply after Brexit, notwithstanding a hard or a negotiated Brexit.

7 Will the governing law of real estate investment transactions documents change after Brexit?

In the EU, rules on conflict of laws for contracts are governed by uniform rules set out in the Rome I Regulation. Following a hard Brexit these rules will no longer apply. In the case of a court dispute both the Czech and UK courts will determine the governing law based on national conflict-of-law rules. The Czech courts will still recognise and uphold any choice-of-law clause in transaction documentation (which choice will naturally not extend to proprietary aspects relating to transfer of real estate). Court jurisdiction and enforcement of court judgments (in the case of a court dispute arising from real estate investment) will no longer be governed by EU regulations (Brussels I bis in particular). Following a hard Brexit, both the Czech Republic and the UK will be

bound by the 2005 Hague Convention on Choice of Court Agreements. By virtue of this Convention the courts of both countries will recognise exclusive choice-of-court agreements setting out the exclusive jurisdiction of the Czech or UK courts (or the courts of another signatory country) in commercial matters. Judgments issued by the courts of one country will be recognised and enforced by the courts of the other country. These issues again should be carefully addressed in the transaction documentation.

8 What legal regime will apply to posting of UK management/employees to the Czech Republic following real estate acquisition?

Real estate investment sometimes involves posting of UK managers to Czech real estate companies. Currently, such postings are often conducted by means of posting of employees under the EU rules for free movement of services (the relevant EU directives are implemented by Czech laws). This allows transfer of management without administrative obstacles (no residency or work permit is required). Furthermore, posted employees are generally able to retain their UK social security and health insurance schemes without obligation to pay contributions in the Czech Republic (elimination of double payment), for a maximum of two years. These rules will cease to apply following a hard Brexit. Posted managers will be obliged to obtain both residency and work permits (a work permit is not required if the manager is to serve solely as a member of the statutory or supervisory body) under the terms of Czech national laws. The same applies to payment of health and social security.

9 Will there be any further administrative or other obstacles in relation to completion and settlement of real estate transactions?

Advisers used in the course of real estate transactions (such as lawyers, tax advisors, real estate agents) are often required to run AML checks on their clients. No significant new obstacles or duties will arise for these advisers as a result of Brexit as long as the UK retains the EU-compatible standard of AML rules within its territory. It has already been announced that following Brexit, the UK will retain its access to the SEPA scheme. Hence, electronic money transfers from the UK to the Czech Republic and vice versa are likely to be processed under the same terms (in terms of time and administrative requirements) but may perhaps attract higher banking fees (EU rules limiting bank charges within the EU will no longer apply). Furthermore, based on a decision by the EU authorities, British citizens will be entitled to travel to the Czech Republic (being part of Schengen) for short-term purposes (90 days within any 180 days maximum) without visas.

Contact

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