



CZECH REPUBLIC (COMMERCIAL)

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Aleš Eppinger is a partner of the Schaffer & Partner group from 2008. He is primarily focused in rendering legal services in area of business law, in particular in mergers and acquisitions, furthermore in civil law, property law, insolvency law and judicial and arbitration proceedings.

During his professional career, Aleš has been involved in many international transactions, including important cross-border acquisitions by multinationals, the complex restructuring of important holdings and also in international arbitration. Furthermore, Aleš provided important banks, engineering and energy companies with legal services in particular in business law matters.

Aleš speaks fluent Czech, German and English.

*Schaffer & Partner Legal s.r.o., advokátní kancelář specialises in commercial and contract law, labour law and property law. As a member of international networks, such as CBBL (Cross Border Business Lawyers), WIRAS International and IR Global, S&P Legal is closely connected to law offices throughout the world and uses this experience to offer its clients expert assistance with a global outlook. The many years of experience and the professionalism of our attorneys make sure that we adopt a professional approach to handling every case, have the required overview and sense that an individual solution is required.*

### TOP TIPS FOR

## Successful negotiations

Always read the draft before a meeting, even if your side wrote it.

Do not point out inconsistencies to the other party, but do use them to alter a specific provision in the way you proposed.

Do not let your ego prevail over business goals.

Get information about the counterparty and the negotiators in advance. Cultural differences and points that both parties have in common are important. Start the discussion with an interesting subject, to which both parties may contribute, in order to create a rapport.

**I QUESTION ONE****Which techniques are typically used by international counterparties in your experience to overcome challenges in the negotiation process?**

Always carefully assess in advance which party needs the other more and act accordingly during the negotiations (i.e. adjusting requests, insistences, concessions, deal breakers). Bold negotiation of the key provisions in a contract can allow them to be traded for others later on.

It is advisable to not be insistent on the less important points, and have some 'bonus' concessions ready in advance. The priorities of both parties may be different, and you may win back important points in return.

A final decision maker should be present next to their lawyers at the meeting. This can help to convince the other party that you are results-oriented and both parties are serious about the successful execution of the contract.

Providing a break for tea, coffee or a meal when you cannot mutually agree on a specific issue, provides time to calm the environment. Each party then has time to reassess and rephrase their requests.

If a counterparty tries to avoid including a provision that you propose with vague language (e.g. 'we'll handle it'), remind them that it must appear in the written contract being negotiated.

It is also important to always stress that you understand a counterparty's points or concerns, but that understanding and agreeing are not the same thing. Therefore, if you are stuck on a specific provision for longer than necessary, propose to skip it for a while. Do not forget that impressing the counterparty with sympathy, confidence and honesty sometimes can return as an acceptance of a request, which "normally" would not be accepted.

**I QUESTION TWO****Is there anything special or peculiar about commercial contract law in your country that General Counsel should be aware of?**

Czech commercial contract law is no longer ruled by the separate Commercial Act No. 513/1991 Coll., Commercial Code, in the version valid by 31 December 2013, but by the Act No. 89/2012 Coll., Civil Code, as amended (hereinafter referred to as the 'Civil Code').

It is worth taking note of Section 1729, where it is stated: 'If contract negotiations between parties reach a point where the conclusion of the contract seems highly probable, the party which terminates the negotiations without a just cause despite reasonable expectations of the other party to conclude the contract, is acting unfairly.'

Section 1729 also confirms that;

'A party who acts unfairly shall compensate the other party for the damage, but only to an extent not exceeding the loss from failing to conclude a contract in similar cases.'

Czech civil/commercial law is based upon the principle of the autonomy of the person's will, but this also has its limits. The dishonesty of the party's conduct lies in the fact that such an expectation has been triggered by its actions and negotiations have subsequently ended without a fair cause.

Commonly, the last step in a transaction provides the greatest hurdle – namely the achievement of the required form, or proof of fulfilment of certain conditions (e.g. expert opinion). The high probability that the contract would otherwise have been concluded has to be objectively assessed.

**I QUESTION THREE****What recent legislative developments in your jurisdiction affect commonly drawn up contracts such as articles of incorporation, shareholder agreements or executive remuneration? Can you provide any relevant case law to illustrate this?**

Changes have been made to Czech law covering the requirements of written contracts in regard to agreements concerning executive performance and remuneration. (hereinafter referred to as the 'Agreement')

According to the latest legislation, the Agreement has to be in written form, containing defined provisions around remuneration (the exact amount, or the percentage, plus any other non-monetary bonuses). If this is not done, remuneration is deemed to be zero.

Agreements must be approved by the General Meeting and the individual. According to recent case law, post-approval is possible, but we recommend approval prior to commencement of the contract. The approval of the General Meeting is also required for work performed outside of an employment contract, while executives may not receive a percentage of a company's profit, unless stated in the articles of association.

Another change relates to the incorporation of a company and its procedures. New legislative changes speed up the administrative process of company incorporation. The public notary, who prepare the articles of association (establishes the company), can now incorporate the company into the Commercial Register themselves.

The minimum amount of capital required to register a company has also changed. A limited liability company can now be incorporated with CZK 1, since the minimum input of an individual partner is CZK 1 and the company can be incorporated by one person. Previously the minimum amount of capital required by Czech articles of association was CZK 200,000.

The Czech Commercial Corporations Act does allow a limited liability company to create special shares (e.g. shares with fixed profit distribution claim but with limited voting rights). In this event, creating a joint venture and incorporating all the specifics into a shareholders' agreement has become crucial and can be also quite challenging if it is to be done in harmony with the articles of association.