

# Czech Republic

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## Securing acquisition loans in the Czech Republic

**Vlad Petrus**  
**Clifford Chance LLP**  
**Prague**

With the Czech Republic's entry into the EU, Czech corporate law has undergone substantial revisions by introducing new legislation aimed mainly at harmonizing Czech law with the relevant EU legislation. Certain further amendments may still be necessary, however, to clarify ambiguous provisions recently adopted. This article briefly describes some of the uncertainties of Czech corporate law as they impact on acquisition financing in the Czech Republic.

### Financial assistance

Czech companies are prohibited from financing an acquisition of either their own shares or shares in their parent, or from providing security for such financing. Importantly, this is an absolute prohibition with no whitewash procedures permitted in certain circumstances. It is unclear, however, whether only joint-stock companies (suffixed in the Czech Republic with *as*) are prohibited from such financial assistance, or whether such prohibition applies also to limited liability companies (which can be identified by the suffix *sro*). For example, one view among market participants is that financial assistance is permissible where both the target and its subsidiary granting the security are limited liability companies. As far as cross-border acquisition lending is concerned, it is also uncertain whether the foreign target's legal form should influence the ability of the target's Czech subsidiary to provide financial assistance under Czech law.

Whether acquisition lending or security granted with respect to such loans, transactions falling under the financial assistance prohibition will be void under Czech law. This would likely be the case even where the company providing the financial assistance was in fact unaware of the actual purpose of the transaction. If the parties attempted to avoid the financial assistance prohibition by lending first on an unsecured basis and then refinancing the existing acquisition loan by a new secured facility for non-acquisition purposes, such refinancing would also probably be void.

In the case of multi-jurisdictional cross-border acquisition loans concerning group acquisitions at the holding level, the Czech company would, in addition to the loan obligations of the acquiring vehicle as its post-acquisition parent, often secure also obligations of its sister companies in the group, who accede to the acquisition loan as guarantors. The security documentation should then expressly exclude the acquiring vehicle's loan obligations from the scope of the obligations secured by the Czech company, because the obligations of its sister companies arguably fall outside the scope of the financial assistance prohibited by Czech law and, as such, may be secured by the Czech company.

### Guarantee valuation

Under Czech law, intra-group guarantees above a certain value should arguably be evaluated by a court-appointed expert. In practice, this applies mainly to multi-jurisdictional borrowings at a holding level, where the holding's subsidiaries in the various jurisdictions accede to the loan as local guarantors. The applicable legal provisions are unclear to such an extent that is uncertain if this requirement was indeed intended when the new law was adopted in 2001. Most of the banks take a cautious approach and, if commercially sensible, request an expert valuation. This is fraught with further uncertainties.

For example, because it is unclear whether the Czech guarantor should receive proper consideration for the guarantee, the guarantor's directors are often concerned with the breach of their fiduciary duty owed to the company and are reluctant to grant the guarantee without consideration. The risk of such potential directors' liability will be reduced if the guarantor receives a consideration that corresponds to the value of the guarantee established by the court-appointed expert.

Such expert may, however, often value the guarantee at zero on the basis that the guarantor's assets are negligible when compared with the total principal amount of the loan. Alternatively the expert may conclude that the consideration is received by the guarantor in the form of the guaranteed loan from which the guarantor indirectly benefits as a member of the group to which the loan is made. In such cases, directors will usually agree to the guarantee being granted without the guarantor's receiving any additional payment or benefit. If the amount of the guaranteed liabilities significantly exceeds the company's net assets, however, the directors will often request that the guarantee obligations be limited to the guarantor's net assets so as to avoid the company's contingent insolvency. This should be resisted by lenders because there is no justification for such a request under Czech law.

### Conclusion

Czech corporate law has evolved in the last four years, with much progress having been made to ensure compatibility with EU law. It appears though that, perhaps inevitably, due to a very aggressive legislative timetable and accelerated legislative process, the existing codified law will require further amendments to achieve the desirable level of clarity.

## Banking

### Recommended firms

Allen & Overy

Clifford Chance

Linklaters

Weil Gotshal & Manges

White & Case

Baker & McKenzie

Balcar Polansky Norton Rose

Brzobohatý Broz & Honsa

CMS Cameron McKenna

Glatzová & Co

Procházka Randl Kubr

Squire Sanders & Dempsey

Salans

Gleiss Lutz

Holec & Partners

Kocián Solc Balastik

Lovells

Nörr Stiefenhofer Lutz

Wolf Theiss

### Allen & Overy

Allen & Overy is truly a leading banking practice, with a plethora of leading lawyers. Jan Myska, Mikuláš Touska and Václav Valvoda are all highly recommended for their banking work, even if they also spend time working on capital markets and project finance deals. Touska, who is seen as a dependable and knowledgeable lawyer, is recommended in Euromoney's *Guide to the World's Leading Banking Lawyers*.

A&O recently advised WestLB, as the arranger, facility agent and security agent, on a credit facility agreement of €68 million (\$84 million) to a large hotel chain in the Czech Republic. It was the third time the firm has been involved with financing deals in the sector. It was also involved with Cesky Telekom's buy-up of Eurotel and advised Crédit Lyonnais on the refinancing of the Energy Centre Kladno Generating power plant.

**Key contact partners**

Mikulás Touska  
Václav Valvoda

**Leading lawyers**

Jan Myska  
Mikulás Touska  
Václav Valvoda

**Clifford Chance**

The Prague office of Clifford Chance has, alongside Allen & Overy, the leading banking and finance practice in the Czech Republic. Led by Vlad Petrus and William Knowles, the team has grown substantially over the last year and now has a commanding share of the domestic and international work.

The firm often advises banks rather than borrowers on banking deals. Last year, for example, it acted for Citibank and Komerční on a Kc2.5 billion (\$96.5 million) term and revolving syndicated facility for Česká Rafinérská, the largest Czech refinery company. It also acted for WestLB on a €70 million (\$86 million) guarantee facility to support a European Investment Bank loan to the City of Prague and advised Deutsche Bank on an amended and extended \$300 million state-guaranteed loan to Aero Vodochody, the Czech aircraft manufacturer.

**Key contact partners**

William Knowles  
Vlad Petrus

**Leading lawyer**

Vlad Petrus

**Linklaters**

Although market opinion suggests that it doesn't quite have the finance reputation that its fellow English firms, Allen & Overy and Clifford Chance, have established in the Czech Republic, Linklaters has worked on some of the most important deals in the country. For example, it represented a syndicate of banks including ABN AMRO, HSBC, HVB and BACA on the provision of a Kc9 billion (\$347 million) bridge finance facility and a guarantee facility to Česká Správa Letist – the largest Czech financing last year and one that made possible the enlargement of the Prague airport.

Other deals include working opposite Clifford Chance on the guarantee facilities for European Investment Bank loans to the City of Prague, advising Eurohypo on the refinancing of four shopping centres and acting for HVB on four bilateral loans to real estate developers and investors.

**Key contact partner**

Francis Kucera

**Weil Gotshal & Manges**

“Great US firm” Weil Gotshal & Manges has a strong banking practice in Prague that is winning both praise and deals from its clients. Of late those deals have included financing the construction of the new Prague Ruzyne Airport terminal, which is supported by the European Investment Bank and required guarantees from 14 international banks. Other examples are the credit facility required for ProLogis's real estate project in the Czech Republic, a loan to Ingramm International by HVB Bank to refinance its controlling interest in Kablo Elektro and the provision of a loan by J&T Bank to Prokom Software, the largest Polish IT services provider, to finance its acquisition of shares in Czech IT services provider PVT.

On the back of this work the firm fully deserves to be upgraded to the second tier for banking work, as it has been this year.

**Key contact partners**

Karel Drevínek  
Karolína Horáková  
Petr Severa

**White & Case**

There are six partners and 12 associates in the banking practice of White & Case in Prague, of which five are qualified in the US or the UK as well as locally. Michal Dlouhy remains the firm's star banking partner, singled out by his peers as a market leader.

The firm's work over the last year has included advising Austrian bank Erste Bank on its acquisition financing of AEH Group to acquire Eclipse, the largest advertising company in central and eastern Europe. The deal was unusual in the Czech market for its leveraged buyout techniques and use of Loan Market Association documentation. It also advised CSOB on a secured acquisition financing provided to the Orco Property Group to buy IPB Real, a leading Czech developer. This deal had to be structured, negotiated and funded within a short timeframe set out in the acquisition documentation. It also demonstrated White & Case's strength and depth, requiring experts on real estate, financing and security matters.

**Key contact partner**

Michal Dlouhy

**Leading lawyer**

Michal Dlouhy

**Other notable firms**

**Balcar Polansky Norton Rose**, the joint venture of Czech law firm Balcar Polansky & Spol and English firm Norton Rose, does some high-profile banking work, particularly for Commerzbank and NIB Capital. **Glatzová & Co** also has a

strong domestic practice, and worked opposite White & Case on Orco's acquisition financing for the takeover of IPB Real. **CMS Cameron McKenna** comes in for a lot of praise from clients, with one saying they were "very content" with the firm's performance and that it was "highly professional." Martin Aschenbrenner also deserves mention for his well-regarded banking work at Czech firm **Procházka Randl Kubr**.

## Capital markets

### Recommended firms

Allen & Overy

White & Case

Clifford Chance

Linklaters

Procházka Randl Kubr

Weil Gotshal & Manges

Brzobohatý Broz & Honsa

CMS Cameron McKenna

Glatzová & Co

Kocián Solc Balastik

Squire Sanders & Dempsey

Weinhold Legal

### Allen & Overy

A&O's capital markets work is led by partner Mikuláš Touska, who is highly recommended for his debt work and is listed in Euromoney's *Guide to the World's Leading Capital Markets Lawyers*. Václav Valvoda is equally well-regarded by debt and bond issuers.

The firm advised Telsource, a joint venture by KPN and Swisscom, on its offering of a 27% stake in Cesky Telekom. The transaction was done through an accelerated bookbuild, managed by CSFB and Morgan Stanley, and totalled €680 million (\$834 million). It was the largest equity offering ever in central and eastern Europe and involved several complex aspects – accelerated bookbuild techniques and post-closing stabilization was used for the first time in the country.

#### Key contact partner

Mikuláš Touska

#### Leading lawyer

Mikuláš Touska

### White & Case

White & Case is "one of the most active firms in this area," working on "most of the eurobonds issued out of the Czech Republic". The 12-strong capital markets team is among the largest in the country.

Its work has developed in recent years to encompass different types of equity offerings, such as initial public offerings (IPOs) and public tender offers – new and developing sectors in the Czech Republic. In perhaps the landmark deal of the year – both for White & Case and for the Czech capital markets – the firm represented Merrill Lynch in its capacity as lead manager of the first successful IPO in the Czech Republic, by Zentiva, the largest pharmaceutical company in the Czech Republic and Slovakia. Zentiva was privatized in the 1990s and acquired by Warburg Pincus private equity funds and management. The \$211 million IPO comprised an international offering of shares and a public offering in the Czech Republic. The shares were listed on the Prague stock exchange. It is unsurprising that White & Case won the mandate for this deal, given that the firm was involved with revising the securities laws that made IPOs possible in the Czech Republic.

In debt capital markets the firm is assisting the City of Ostrava on its eurobond issue and advised Czech energy company CEZ on a Kc30 billion (\$1.67 billion) bond programme, one of the largest capital markets transactions carried out in the Czech Republic to date. White & Case also represented Morgan Stanley and Deutsche Bank, acting as joint arrangers and dealers of the Czech Republic's €3 billion (\$3.7 billion) programme for the issuance of debt instruments, followed by the initial issue under the programme of €1.5 billion-worth of Luxembourg-listed notes. This issue, handled by Michael Dlouhy, was the first international bond issue by the Czech Republic.

The firm has also been involved in a range of derivatives transactions over the last year, advising several banks on the relevant Isda documentation.

#### Key contact partner

Michal Dlouhy

#### Leading lawyer

Michal Dlouhy

### Clifford Chance

The quality of Clifford Chance's capital markets is demonstrated by both its breath – covering everything from commercial paper to derivatives to eurobonds – and its innovation – the firm advised Credit Suisse First Boston last year on the first ever securitization in central and eastern Europe involving consumer loans and credit card receivables. The €130 million (\$160 million) deal was originated by Home Credit Finance, a leading Czech lending house.

The team, led by managing partner Vlad Petrus, also acted for lead manager Deutsche Bank on setting up a €1 billion medium-term note programme for the City of Prague, and the initial €170 million issue under that programme.

#### Key contact partner

Vlad Petrus

#### Linklaters

Francis Kucera is the managing partner of the Linklaters office in Prague and a specialist in issues of debt, equity and equity-linked securities in the capital markets. He worked for Linklaters in London, Bangkok and Singapore before joining the Prague office in 1999 and his clients include ABN AMRO, CSFB, the European Bank for Reconstruction and Development, Goldman Sachs and JP Morgan on the finance side and Conoco, Trigranit and US Steel on the corporate side.

Kucera led the team that advised JP Morgan on its successful bid for the purchase of a portfolio of receivables from Česká Sporitelna – one of the few high-volume non-performing loan tenders in the Czech Republic and a deal that involved due diligence on a portfolio containing 23,000 receivables. He also advised the City of Prague on setting up a €1 billion (\$1.23 billion) medium-term note programme and the first issuance of bonds under it – €170 million in notes due 2013.

#### Key contact partner

Francis Kucera

#### Leading lawyer

Francis Kucera

#### Procházka Randl Kubr

A “good domestic firm” according to its international rivals, Procházka Randl Kubr does not have quite the market share of capital markets deals to compete with the top two, yet sits comfortably alongside international firms Linklaters, Clifford Chance and Weil Gotshal & Manges.

No mean feat, given the flow of work that those firms’ international networks can provide, and one which is supported by the firm’s work as well as its reputation. Last year the firm advised on the Kc7 billion (\$270 million) bond issue by the Czech Railway Grid, worked on a Kc5 billion bond issue by CKA arranged by Deutsche Bank, acted on an issue of structured equity-linked notes for HVB Bank and advised on the increase of the European Investment Bank’s domestic debt issuance programme from Kc30 billion to Kc80 billion, arranged by Commerzbank Securities.

Martin Aschenbrenner is the firm’s head of banking and finance and is well regarded by both peers and clients.

#### Key contact partner

Martin Aschenbrenner

#### Leading lawyer

Martin Aschenbrenner

#### Weil Gotshal & Manges

Weil Gotshal’s 15-lawyer capital markets team has a strong reputation in the local market and includes some good Czech-qualified lawyers. Karel Drevínek and Petr Severa, examples of this internationally focused yet locally qualified team, were both made up to partner at the beginning of 2004.

The firm counts Nomura International, Cesky Telecom, the Czech Savings Bank and Franklin Templeton International among its clients. Last year it advised Cesky on a secondary offering by Telsource of its 27% stake in the telecoms company and helped Franklin with the licensing of its investment fund in the Czech Republic.

#### Key contact partner

Karel Muzikar

#### Other notable firms

An up-and-coming local firm, **Brzobohaty Broz & Honsa** worked on the country’s first securitization, of consumer loans, and the first deal to receive a public rating. It is also involved with the development of derivatives work in the Czech Republic, with members of the firm helping the International Swaps and Derivatives Association on its work in the country. **Kocián Solc Balastik** is also highly rated, with “great lawyers” and “some real experts for capital markets transactions”.

## Insolvency and restructuring

### Recommended firms

Allen & Overy

Clifford Chance

Weil Gotshal & Manges

White & Case

Brzobohaty Broz & Honsa

Glatzová & Co

Kocián Solc Balastik

Procházka Randl Kubr

### White & Case

The difficult conditions in some economic sectors throughout the last year have kept White & Case’s insolvency and

restructuring team busy, advising on a wide range of major financial restructuring and insolvency matters in the region.

The firm represented GE Capital in tenders to acquire portfolios of non-performing loans from Vseobecná Uverová Bank and Slovenska Konsolidacna Agentura and provided help to Fond Pojistení Vkladu, the Czech state-owned deposit insurance fund. The latter was the first transaction in the history of the Czech Republic in which the Deposit Insurance Fund was obliged to borrow funds to satisfy the claims of clients of a bankrupt Czech bank. The transaction was successful even though there was no state guarantee for the financing.

David Plch, head of the insolvency group, is regarded as a leading lawyer by his contemporaries.

#### Key contact partner

Michal Dlouhy

#### Leading lawyer

David Plch

### Glatzová & Co

The two tiers of recommended firms for insolvency and restructuring represent two very different types of practices. While it is true to say that the international firms handle most of the large, cross-border cases, this is only one side of the story. In terms of volume, most cases are handled by the local firms, who have larger, more specialized departments.

Of these, Glatzová is one of the best. The firm's work last year included advising the Czech government on the restructuring of real estate development group IPB, acting for German retailer LIDL as the creditor on three bankruptcy proceedings of Czech contractors and working on the global restructuring of the Rembrandt industrial group. On the Rembrandt deal, valued at €900 million (\$1.1 billion), the firm worked opposite Clifford Chance, who represented ABN AMRO.

#### Key contact partners

Vít Horáček

Dana Schweigelová

Renáta Zbranková

### Procházka Randl Kubr

With a long history of advising local and international banks on insolvencies and restructurings, Procházka is a leading local firm in this practice area. It is highly recommended by its clients and often works for Komerční Bank when it finds itself the creditor to a company in trouble. At the time of writing it is advising the Bank on two such cases, and is representing Crédit Lyonnais and Bank Praha on the restructuring of manufacturer Chemapol.

Robert Nemeč leads the restructuring department and is well regarded among his peers for the quality and insight of his legal advice.

#### Key contact partners

Robert Nemeč

Daniel Rosický

#### Other notable firms

Among the international firms handling the Czech aspects of cross-border insolvencies, **Allen & Overy** and **Clifford Chance** are two of the leaders. Both have well-regarded practices, headed by Václav Valvoda and William Knowles respectively. A&O was involved with the bankruptcies of aircraft manufacturer LET and machine-tool producer ZPS, while Clifford Chance advised Mizuho Corporate Bank on its unsecured claim against engineering company Skoda and Citibank on its claim against Czech subsidiaries of KPN Qwest Assets.

## Mergers and acquisitions

### Recommended firms

Weil Gotshal & Manges

White & Case

Allen & Overy

Linklaters

Salans

Baker & McKenzie

Squire Sanders & Dempsey

Brzobohatý Brož & Honsa

CMS Cameron McKenna

Dewey Ballantine

Glatzová & Co

Kocián Solc Balastik

Procházka Randl Kubr

Balcar Polansky Norton Rose

Clifford Chance

Lovells

Wolf Theiss

### Weil Gotshal & Manges

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Weil Gotshal's Karolina Horáková is described by her peers as "the top mergers and acquisitions lawyer in the country: smart and great at coordinating deals". Karel Drevínek comes in for equally effusive praise, while head of department Karel Muzikar is not without his admirers. This "great team of lawyers" is the reason Weil Gotshal continues to be among the leaders for corporate advice in the Czech Republic.

The firm's reputation was founded on its privatization work at the turn of the millennium, when it consistently outperformed competitors in terms of both volume and quality. Since then Weil Gotshal has worked on Cesky Telecom's acquisition of a 49% stake in Eurotel Praha, the largest mobile telecommunications operator in the country; the consolidation of the electricity sector brought about by the transfer of regional distributors to generator CEZ; the acquisition by Penta Finance of the North Moravian Water and Sewerage Company from Anglian Water; and the joint sale of shares in industrial holding company Vitkovice and the Czech Consolidation Agency.

#### Key contact partner

Karel Muzikar

#### Leading lawyers

Karel Drevínek  
Karolina Horáková  
Karel Muzikar

### White & Case

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M&A, along with privatization work, has traditionally been a core business for White & Case's Prague office. In the past 12 months the M&A team has been strengthened by the return of Emil Nemeč from a three-year secondment to the International Finance Corporation and the arrival of Zdenek Kabilka, who joined the firm from National Property Fund. Zdenek has long experience of working on public procurement transactions. Roman Denes also joined the firm from Cinergy Global Power, a subsidiary of US energy company Cinergy.

White & Case continued to work with key clients Honeywell, Riverside and Pfizer, as well as being selected by the National Property Fund as its legal advisor on the second attempt to privatize Unipetrol, the largest refining and petrochemical company in the Czech Republic.

#### Key contact partner

Michal Dlouhy

#### Leading lawyer

Michal Dlouhy

### Allen & Overy

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As with most of Allen & Overy's central and eastern European offices, the firm's real strength in the Czech Republic is banking and finance work. Nevertheless, it has a "strong and capable" mergers and acquisitions practice that benefits "from good Czech lawyers" such as Mikuláš Touska, Václav Valvoda and Jan Myska, who is recommended as a rising star at the firm.

Valvoda led the A&O team that advised Cesky Telekom on the €745 million (\$914 million) and Kc3.36 billion (\$131 million) bank financing required for its acquisition of the remaining 49% of Eurotel that it did not already own. The takeover of Eurotel, the Czech Republic's leading mobile telephone network, was one of the biggest deals of the year. A&O worked opposite Weil Gotshal & Manges and Clifford Chance, the latter of whom advised lead arrangers Bank Austria Creditanstalt, Citigroup, JP Morgan, KBC Bank and San Paolo IMI.

#### Key contact partner

Jan Myska

#### Leading lawyers

Mikuláš Touska  
Václav Valvoda

### Linklaters

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Although Linklaters is a relatively new name in the Czech Republic, many of its lawyers have experience of the market and are helping to establish the brand among local banks and corporations. Chief among these partners is Ludek Vrána, who heads the mergers and acquisitions department. He advised steel manufacturer Arcelor on the merger of two of its Czech subsidiaries last year, and advising Hewlett Packard on its contemplated takeover of local data processor PVT.

Lukas Sevcik, although not quite of the stature of Vrána in the market, is a well-regarded corporate partner at the firm. He tends to lead many of Linklaters' transactions, which last year included advising Zurich Insurance on its exit from the Czech Republic and the transfer of its assets to Generali Insurance. He also advised RWE on the sale of its shares in SCE, a regional electricity distribution company, during a public takeover bid.

#### Key contact partner

Ludek Vrána

#### Leading lawyer

Ludek Vrána

### Salans

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When US firm Altheimer & Gray collapsed last year many of its best lawyers were snapped up by the Salans' network of offices. Because of the firm's diverse background, it has a

wealth of international experience and language skills – aside from Czech and English, lawyers at the firm also speak French, German, Italian and several others fluently.

Salans is particularly recommended for its banking and mergers and acquisitions advice.

### **Other notable firms**

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**Brzobohaty Broz & Honsa** has a strong mergers and acquisitions team, meriting its entry into the fourth tier of the M&A rankings. It is involved with the Skoda Holding acquisition, ongoing at the time of writing, and also counts Komerční Bank, První Bank and Česká Pojišťovna among its clients. Martin Aschenbrenner from **Procházka Randl Kubr** drew high commendations from clients, and **Kocián Solc Balastik** is also highly recommended.