New Czech Act on Private International Law

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Regular readers of this blog might recall this post that referred to my article at Transnational Notes about the new Czech Act on Private International Law. The article provided a short general description of the new law that entered into effect on January 1, 2014. In this post I would like to introduce in more detail some provisions of the act, especially those that are not preceded by the EU legislation and thus will govern cases heard by Czech courts. Also, below you will find the link to the English translation of the full text of this new act on private international law.

Introductory remarks

For general comments on the new law I refer to my post at Transnational Notes. Here I will only shortly sum up couple of the main facts.

The act (published under No. 91/2012 Coll.) is part of the private law recodification whose main pillars are the new Civil Code (No. 89/2012 Coll.) and the new Business Corporations Act (No. 90/2012 Coll.). The act has 125 sections divided into 9 parts: (1) General Provisions (§ 1 – 5), (2) General Provisions of Procedural International Law (§ 6 – 19), (3) General Provisions of Private International Law (§ 20 – 28), (4) Provisions Concerning Individual Types of Private-Law Relations (§ 29 – 101), (5) Judicial Cooperation in Relations with Foreign States (§ 102 – 110), (6) Insolvency Proceedings (§ 111 – 116), (7) Arbitration and Recognition and Enforcement of Foreign Arbitral Awards (§ 117 – 122), (8) Transitional and Final Provisions (§ 123 – 124) and (9) Entry into Force (§ 125).

Now I will turn to the provisions that might be of interest for foreign readers.

General issues (§ 1-5 and 20-25)

The law regulates general issues of private international law, such as public

policy (ordre public) exception, overriding mandatory rules, renvoi, qualification (characterisation), preliminary questions or application of foreign law. Unlike the previous "old" act (No. 97/1963 Coll.), the law does not define "ordre public"; instead it only introduces public policy (public ordre) exception as such (§ 4). It is expected that Czech courts will interpret the notion of ordre public in line with § 36 of the old act that defined ordre public as "such principles of the social and state system of the Czech Republic and its law that are necessary to insist on unconditionally." The old law did not contain provisions on overriding mandatory norms; the new act regulates them in § 3 (lex fori overriding mandatory norms) and in § 25 (foreign overriding mandatory norms). While § 3 in fact merely acknowledges the existence of lex fori provisions that are always applicable, § 25 dealing with third state overriding mandatory norms resembles to some extent controversial Article 7 para 1 of the Rome Convention. The new act also regulates circumvention (abuse) of law (§ 5) that may relate both to the conflict rules and the rules on jurisdiction. Characterisation should be usually made under Czech law (§ 20). Foreign law is to be ascertained and applied ex officio (§ 23).

Jurisdiction, recognition and enforcement of foreign judgments

As already suggested, the importance of the act lies in the areas outside the scope of the EU law and/or international conventions/agreements. In cases where neither the Brussels I regulation nor the Lugano Convention (or another international agreement) is applicable, jurisdiction in general civil and commercial matters will be governed by § 6 of the act. Under this provision Czech courts have international jurisdiction if they have local jurisdiction (venue) under the Czech Civil Procedure Code (see §§ 84-89a of the Civil Procedure Code – No. 99/1963 Coll.) – one of possible jurisdictional grounds under Czech law is, e.g., an asset location in the territory of the Czech Republic.

The recognition and enforcement of third state (non-EU, non-Lugano) judgments in general commercial and civil matters is governed by §§ 14-16. Apart from traditional grounds for the refusal of recognition (ordre public, res judicata, lis pendens, fair trial) there is mandatory requirement of (material) reciprocity for cases where the decision is against Czech citizen/entity. Also, for a third country judgment to be recognized in the Czech Republic the foreign court has to have jurisdiction under a base of jurisdiction under which Czech courts may assert jurisdiction, unless the defendant voluntarily submitted to the foreign court's jurisdiction (see § 15 (1) a)).

Conflict rules and rules on jurisdiction in specific matters

In this part I will again mention especially those conflict rules and provisions on jurisdiction that fall outside the scope of the EU legislation.

The primary connecting factor for legal capacity of natural persons is place of habitual residence (§ 29 para 1). However, in case of a name the primary connecting factor is the citizenship with habitual place of residence being a subsidiary connecting factor (see § 29 para 3). Capacity and internal matters of legal entities are governed by the law of the place of incorporation (§ 30).

As the Czech Republic is not a party to 1978 Hague Convention on Agency, the act will be applicable to relations between the principal and third person (these matters fall outside the EU law, which is applicable to principal-agent and agent-third person relations). Apart from a general rule on agency with multiple connecting factors (§ 44), there is a special rule on „proxy“ (“die Prokura” in German) and similar specific types of agency (§ 45).

In the area of family law (§ 47 – 67) one might want to take a look at the conflict rule on divorces (§ 50), as the Czech Republic is not bound by the Rome III regulation. Property regimes of spouses shall be governed by the law of the state in which both spouses are habitually resident; otherwise by the law of the state of which both spouses are citizens; otherwise by the Czech law (§ 49 para 3). The conflict rules, rules on jurisdiction and recognition of foreign judgments in matters of establishment and contesting of parentage are contained in § 53-55. International adoption is governed by § 60-63, registered partnerships and similar unions by § 67.

In the area of rights in rem § 70 para 2 is especially worth noting; it brings about an important change compared to the previous law by assigning the transfer (creation and extinguishment) of ownership under the law governing the contract on the basis of which the ownership is being transferred. § 73 regulates conflict rules for trusts, including the recognition of foreign trusts in the territory of the Czech Republic; the applicable law is the law of the closest connection with the trust, unless the settlor selects the applicable law. Succession is governed by § 74-79, although the importance of these provisions will be largely diminished by the EU regulation on succession, (fully) coming into force in August 2015.

The field of obligations (§ 84 – 101) is largely covered, except for promissory

notes and bills of exchange (§ 93 – 100), by the EU legislation. One of few provisions of the act from this area that should be fully applicable is § 101 on non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation. These shall be governed by the law of the state in which the violation (the act giving rise to damage) occurred, unless the injured person chooses one of (up to) three other laws the provision offers for choice.

Insolvency, arbitration and assistance from the Ministry of Justice

The act also deals with those aspects of international insolvency not covered by the EU Insolvency Regulation (§ 111). As regards applicable law, the act in principle extends the regime of the regulation also to the cases falling outside the regulation's scope (§ 111 para 3). In cases not covered by the regulation, Czech courts may conduct insolvency proceedings if the debtor has an establishment in the Czech Republic provided it is requested by the creditor with habitual residence or seat in the Czech Republic or the creditor?s claim arose in connection with the establishment?s activities. They can also extend jurisdiction based on the regulation to the debtor's assets in a foreign state other than a Member State of the European Union provided the foreign state attributes effects to the proceedings in its territory. Foreign judgments in the insolvency matters shall be recognized under the condition of reciprocity provided in a foreign state in which it was handed down the debtor has a centre of main interests and provided the debtor?s assets in the Czech Republic are not a subject of pending insolvency proceedings.

The arbitration matters are largely covered by international agreements to which the Czech Republic is a party, namely the New York Convention and the European Convention on International Commercial Arbitration, thus the impact of the act is limited. Still, apart from the recognition and enforcement of foreign arbitral awards (§120 – 122), the act also regulates the conditions under which a foreigner may be designated as arbitrator (§ 118). An admissibility of an arbitration agreement shall be assessed under the Czech law and its material validity shall be governed by the law of the state in which an arbitral award is to be issued.

Finally, there is one specific feature of the act worth mentioning: given the complexity of international matters the act provides an opportunity for courts to consult the Ministry of Justice in cases covered by the act (§ 110). It goes without

saying that such a consultation is optional and the Ministry's opinion is by no means binding upon the court.

Concluding remarks

I will not repeat my conclusion about the act from my post in Transactional Notes, instead I give you an opportunity to make your own conclusions about the act and its potential added value (not only practical but also in comparative perspective): in order to make the new act available to readers from around the world, my law firm has provided for the English translation of the act. You can download it free of charge via this link.

Those who would like to explore the act, its context and related case law may be interested in the commentary I have co-authored together with my colleagues from the Ministry of Justice, Czech Supreme Court and a notary. Unfortunately, it is only in Czech; the same goes for this commentary written by other team of authors.

Any comments or questions regarding the act or its translation are welcome either under the post or at petr.briza@brizatrubac.cz .