Czech Republic: Trust fund – a newly-introduced asset management option

The recent re-codification of Czech civil law has introduced a new legal instrument called a trust fund or simply a trust. In adopting the concept originating from Anglo-Saxon legal tradition, the Czech Republic has become one of the few countries in continental Europe whose legal systems can offer this vehicle, which is attractive for both business and private use.

General features

A trust is a vehicle constituted by a settlor (founder) who transfers property thereto. The trust is administered by a trustee in favour of a beneficiary – the person(s) intended to benefit from the vehicle. All these persons may all be either different or coincide in one person.

An essential feature of a trust is that it has no legal personality, and thus may be only defined by its property and purpose. A trust enables the establishment of a distinct and autonomous set of assets, designated to fulfil any public or private purpose. Its essence is such that whilst any assets transferred to a trust cease to be owned by the settlor upon the constitution of the trust, they do not become assets owned by anyone else, such as a trustee or a beneficiary.

Private asset management

In practice, a trust may be used to satisfy the needs of those who, for whatever reason (e.g. age, illness or workload), seek to reduce a burden upon them stemming from the administration of their property. Alternatively, a trust makes it possible to individually establish a transfer of property to one’s descendents without any of the legal restrictions normally associated with inheritance.

In addition, under Czech law any performance provided to one’s heirs (or in favour of family members) is exempt from personal income tax. This enables foreign citizens to evade high inheritance or gift taxes levied in their countries of origin by means of founding a trust in the Czech Republic.

Last, but not least, a trust may also be constituted in order to anonymize the settlor’s property, since no public register of trusts exists under Czech law.

Corporate asset management

A trust may also be used to satisfy a variety of needs in the range of business and corporate relationships.

It may serve to structure international financial projects (for example, when financing companies in financial distress) or to facilitate a corporate restructuring.

Furthermore, it may serve as an instrument of collective investment or form a useful part of employee incentive schemes, e.g. through acquiring of investment tools.

Interestingly enough, a trust may also be utilised as an alternative to acquiring a company or as special form of flexible, effective joint business ventures, tailored precisely to the investors’ needs and visions.

From the banking sector’s view, a trust may be used to further appreciate assets, or within the framework of mitigating and estimating credit risks. Banks in need of cash can also employ trust structures, by transferring their liquid assets thereto in
exchange for loans from the potential beneficiaries. This mechanism can also work in reverse, with banks accepting trusts as securities.

Finally, trusts have recently helped to access the structures of Islamic banking, as this investment vehicle is not based on earning interest and thereby complies with Islamic law. This approach has been positively tested, for example, in Great Britain.

Conclusion

The modern methods for the administration of property and investments introduced by the re-codified Czech civil law has made both the Czech legal and business environment more attractive for investors. The Czech Republic is thus far the only country in Central Europe to have implemented the legal institution of a trust, but its introduction in the country may well have an impact on the region as a whole.