

Vlastimil Pihera

Foreign Trusts / Trust-like instruments in the Czech Republic:  
mostly recognized and (sometimes) registered

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## EXPLANATORY MEMORANDUM TO THE CZECH ACT ON PRIVATE INTERNATIONAL LAW

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The draft Civil Code contains provisions on trusts. Section 73 therefore provides for conflict-of-law rules for this legal institution. This conflict-of-law rule is based on the rules contained in the Hague Convention of 1 July 1985 on the law applicable to trusts and their recognition. The Convention is not binding on the Czech Republic, which is not a contracting state to it.

## TRUSTS RECOGNITION IN CZECH ACT ON PRIVATE INTERNATIONAL LAW

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§ 73

### **Trust fund or similar facility**

(1) A trust fund or similar arrangement (hereinafter referred to as "the fund") shall be governed by the law specified by the settlor if the specified law governs the fund or the provisions of that law are otherwise applicable to it.

(2) If no law is specified under subsection (1) or if it is not applicable, the fund shall be governed by the law of the State with which it is most closely related. In determining that law, account shall be taken in particular of

- a) the place from which the fund is administered,
- b) the place in which the assets constituting it are principally situated,
- c) the place where the trustee is domiciled or habitually resident,
- d) the purposes pursued by the creation of the trust and the places where those purposes are to be achieved.

(3) Where it is possible to separate a particular element of the trust from the others, the applicable law may be determined separately for that element.

(4) A fund established abroad shall also be recognised in the field of Czech law if it exhibits the essential features required for it by Czech law.

## § 73(4) AIPL vs Art. 11 HC

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A fund established abroad shall also be recognised in the field of Czech law if it exhibits the essential features required for it by Czech law. (§ 73(4) AIPL)

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A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust. (Art. 11 HC)

## Art. 2 HC

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For the purposes of this Convention, the term "trust" refers to the legal relationships created - inter vivos or on death - by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

A trust has the **following characteristics** -

- a) the assets constitute a separate fund and are not a part of the trustee's own estate;
- b) title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;
- c) the trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust and the special duties imposed upon him by law.

The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust.

## Art. 11 HC

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A trust created in accordance with the law specified by the preceding Chapter shall be recognised as a trust.

**Such recognition shall imply, as a minimum, that the trust property constitutes a separate fund, that the trustee may sue and be sued in his capacity as trustee, and that he may appear or act in this capacity before a notary or any person acting in an official capacity.**

In so far as the law applicable to the trust requires or provides, such recognition shall imply, in particular -

- a) that personal creditors of the trustee shall have no recourse against the trust assets;
- b) that the trust assets shall not form part of the trustee's estate upon his insolvency or bankruptcy;
- c) that the trust assets shall not form part of the matrimonial property of the trustee or his spouse nor part of the trustee's estate upon his death;
- d) that the trust assets may be recovered when the trustee, in breach of trust, has mingled trust assets with his own property or has alienated trust assets. However, the rights and obligations of any third party holder of the assets shall remain subject to the law determined by the choice of law rules of the forum.

## **REGISTER OF FOREIGN FUNDS – FOREIGN TRUSTS OPERATING IN CR**

### **§ 7 & § 65a of Act on Public Registers of Legal and Natural Persons**

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Foreign trust fund is defined as institutions **similar in structure or function** to Czech trust funds governed by the law of another state and **operating in the Czech Republic.**

A foreign trust fund operates in the Czech Republic, in particular if

- (a) it is administered from the territory of the Czech Republic,
- (b) it consists of assets which are predominantly located in the territory of the Czech Republic,
- (c) it administers immovable property situated in the territory of the Czech Republic,
- (d) its trustee or a person in a similar capacity is domiciled or has his/her registered office in the Czech Republic,
- (e) its trustee or a person in a similar position in relation to the property administered has established a business relationship in the Czech Republic; or
- (f) the purpose pursued by its creation is to be achieved in the territory of the Czech Republic.

## **REGISTER OF FOREIGN FUNDS – REGISTERED INFORMATION**

### **§ 65g of Act on Public Registers of Legal and Natural Persons**

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The following shall be entered in the trust fund register in respect of a foreign trust fund

(a) the designation of the foreign trust fund and its identification number, (b) the law of the State governing the foreign trust fund and, if that law prescribes registration, the register in which it is registered and the registration number, (c) the purpose of the foreign trust fund and, if applicable, the object of the activity, business or ancillary economic activity, if any, (d) the particulars required by this Act to be recorded with the trustee of the trust, (e) the dissolution of the foreign trust, (f) the declaration of bankruptcy or the commencement of other similar proceedings in respect of the foreign trust; and (g) termination of the foreign trust's activities in the Czech Republic.

## Czech Registry of Ultimate Owners

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§ 2 – „foreign trust fund a trust fund or an institution **similar to it in structure or functions** governed by the law of another state“.

### § 12

The register of beneficial owners shall furthermore record or automatically enter the statutory details of the beneficial owners of legal arrangements **of which the trustee is a resident, registered office or branch (a) in the territory of the Czech Republic, or (b) outside the territory of a Member State of the European Union**, and

1. the legal arrangement is administered from the territory of the Czech Republic,
2. the legal arrangement consists of property which is predominantly located in the territory of the Czech Republic,
3. the legal arrangement is administered by immovable property located in the territory of the Czech Republic,
4. a business relationship has been established in the Czech Republic in relation to the managed property; or
5. the purpose pursued by the creation of the legal arrangement is to be achieved in the territory of the Czech Republic.

## Recognition of foreign trusts for tax purposes

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General Financial Directorate defined six criteria in 2014 that a foreign trust must meet in order to be comparable with a trust fund established under the Czech Civil Code:

- (1) it is created by setting aside the settlor's assets so that the assets are entrusted to a trustee for a specific purpose by contract or acquisition on death,
- 2) its trustee holds and manages the property, exercises ownership rights over the property in its own name and for the account of the entity, keeps the accounts of the foreign entity,
- 3) its property is neither the property of the trustee nor the property of the settlor, nor the property of the settlor,
- 4) it has no legal personality (legal subjectivity),
- 5) it proves that it is deemed to be a tax resident under the law of the State of which it is a tax resident taxpayer subject to a tax similar to the corporate income tax and its income is the law of that State is not attributable, even in part, to other persons,
- (6) the gain on the appreciation of the property and the payment to the person to whom it is paid is taxable income under the law of the State in which he is resident.

## Děkuji za pozornost

### Sídlo Praha

Jungmannova 745/24  
110 00 Praha

**Tel.:** +420 224 103 316

**Fax:** +420 / 224 103 234

**E-mail:** ksbpraha@ksb.cz

### Pobočka Karlovy Vary

Závodní 391/96C  
360 06 Karlovy Vary

**Tel.:** +420 353 225 996

**Fax:** +420 353 227 781

**E-mail:** ksbvary@ksb.cz

### Pobočka Ostrava

Československá 2227/7  
702 00 Ostrava

**Tel.:** +420 553 030 511

**Fax:** +420 553 030 512

**E-mail:** ksbostrava@ksb.cz