

# LEGAL/TAX ISSUES REGARDING CZECH CLIENTS IN INTERNATIONAL TRANSACTIONS

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# INTERNATIONAL TRANSACTION

## Foreign element

- One subject is a foreigner or legal relation crossing over the state border (cross-border transaction)
- Contractual party is a foreign natural person or a legal entity
- Object of legal relation is located abroad
- Connection with another contractual relation (main) which is governed by foreign law
- Legal facts causing rise, change or termination of legal relations occurred abroad



# 1) PURPOSE OF CO-OPERATION

- Co-operation between producer and distributor ?
- Co-operation between producer and supplier ?
- Commercial representation ? Joint– Venture ?

## ANALYSIS OF OWN COMMERCIAL POSITION

Analysis in way „know yourself“ assists in determining better:

- what I want to reach by co-operation
- with whom and why I want to co-operate
- under which conditions
- which limits I am ready to accept



# WEAKNESS AND STRENGTHS

- Identification of one's own weakness helps in the finding of a stronger commercial partner
- Identification of one's own strengths helps in negotiation and in the persuasion process



# DUE DILIGENCE CONTRACT

Should contain:

- purpose of revision inspection
- extension
- time frame
- price and payment of remuneration
- transmitting of documents and their return
- co-operation and communication
- transmitting of report and explanation



## 2) KNOWLEDGE OF PARTNER

### Companies Register and other registers

- Business name, legal form, seat,
- amount of basic capital, right for acting on behalf of the company, other legal relevant facts (e.g. entrance into liquidation, ordering of execution, information on merger and etc.)
- **evidence of real property**
- **registration of intellectual property** (trade marks, patents, utility models and industrial designs)
- **other sources of information**
- e.g. information from web pages, catalogues



# 3) CONCLUSION OF CONTRACTS

- non-binding commercial communication x binding conclusion of contract
- business meeting ▼
- letter of intent ▼
- future contract ▼
- contract



# NEGOTIATION POSITION AND STRATEGY

identification of head targets:

- what must be attained
- what should be attained
- what is less important
- what is not important
- assumption of priorities of the other contractual party
- preparation of potential concessions/compromises in less important matters
- selection of points for negotiation under actual situation



# ROLE OF MINUTES

- agenda
- participating persons
- agreed points
- opened points
- further steps
- date and place of future meeting (if negotiation was not finished)



# 4) VALUABLE CONTRACT

- exactness
- definite
- useful remarks to enclosures (easier updating of contracts by change of enclosure than by amendment)
- stipulation of object of contract (time of fulfillment, in which quality, in which time should be fulfillment)
- specification of goods/fulfillment
- delivery goods (INCOTERMS)
- stipulation of price/remuneration and safe payment
- duration of guarantee and responsibility for damage
- language of contract and prevailing language version in bilingual language contracts



# 5) TAX AND LEGAL OPTIMALIZATION

## Optimalization

- selection of optimal legal form under type and expected duration of co-operation
- question of taxation of incomes/gains
- selection of optimal tax solution
- joint venture



# BUILDING JOINT-VENTURE

Interest in Working Together



Readiness to accept the mutual decision-making



Verification of status quo – Due Diligence  
(areas: legal, economical, technical, ecological)



Continuation of the mutual efforts to reach a business success on the market



Division of tasks – financing, know-how , material ..

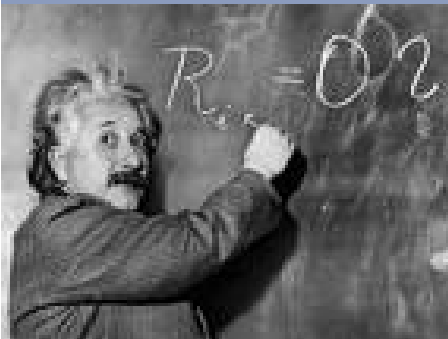


Legal person (corporation) established according to the Czech Law – Ltd., Shareholder company  
Partnership → Agreement for creating Joint Venture  
Legal person (corporation) established according to a Foreign Law



## 6) PROTECTION OF CONFIDENTIAL DATA AND INTELLECTUAL PROPERTY

- protection of intellectual property (domains, trade marks, brands etc.)
- performance of security and gradual release of any confidential data (strategy, information about sales, etc.)



# DISCLOSURE AGREEMENT

- regulates the condition and manner of the release of confidential information and solves breaching connected duties
- contractual penalty and compensation of damages



# TRADE SECRETS

(Section 17 of the Commercial Code)

„One of the rights appertaining to an enterprise involves secrets. Trade secrets include commercial, manufacturing and technological data relating to the enterprise which have actual or potential material or nonmaterial value, are not commonly available in the business circles in question, and are to be kept confidential at the discretion of the entrepreneur, who ensures that this enterprise's secrets are protected in a suitable manner.“



# 7) CONTROL AND SUPERVISION

not only before the termination of transaction  
but also during transaction

- contract on control activity
- certification process
- question of transfer of risk of damages
- responsibility for defects, damage



# 8) COMMUNICATION

- language is a way of communication
- selection of suitable persons on both sides
- regular reporting (transaction time plan)
- different communication levels
- key decisions are made by member(s) of statutory body
- operational questions are discussed by delegated persons



# 9) GOVERNING LAW AND DISPUTES SOLUTION

## SELECTION OF GOVERNING LAW

- Czech or foreign law
- law of a third country
- knowledge of foreign governing law

Act No. 97/1963 Coll., About International Private and Procedural Law

- foreign regulation of international private law



# Fixation of governing law by regulation of conflict of laws

Express fixation of governing law (expressly  
included in a written contract)

x

Silently (in regards to concrete legal norms or in  
regards to general business conditions  
regulating also the question of governing law)





# DISPUTE RESOLUTION

- court
- arbitration
- alternative ways of dispute resolution (mediation, conciliation, negotiation)

An Arbitration clause also could be concluded separately and also after the conclusion of relevant contracts



# 10) RIGHT OF SELECTION OF EXTERNAL ADVISERS

- co-operation with experienced lawyer, tax advisors and accountants
- a less costly method translates into preventive measures rather than problems solution
- an insurance of professional responsibility



# THANK YOU FOR YOUR ATTENTION



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