

## NEW CZECH FOREIGN DIRECT INVESTMENT SCREENING REGIME

On 19 January 2021 the Czech Parliament passed a new act that aims to strengthen the control of foreign direct investments in the Czech Republic (the "**FDI Act**"). The FDI Act has been introduced as a result of the new EU framework<sup>1</sup> for the screening of foreign direct investments, which was adopted on 10 April 2019 and which applies from 11 October 2020. The FDI Act will have a significant impact on many strategic investments from non-EU countries. Rigorous and potentially retroactive screening of investments may deter potential non-EU investors from considering the Czech Republic as an investment target. The Ministry of Industry and Trade will be in a position to hit the brakes on in-scope transactions made by non-EU investors.

The FDI Act will become effective on 1 May 2021.

### SCOPE OF APPLICATION

Under the FDI Act, a foreign direct investment is any investment made in the Czech Republic by a non-EU investor acquiring a stake in a Czech company that represents effective control, which means:

- acquisition of a stake equal to or greater than 10% of voting rights in the target,
- membership of the foreign investor (or its related party) in the corporate bodies of the target,
- ownership of an asset through which the target's business activity is carried out by the investor, or
- other type of control resulting in the foreign investor gaining access to information, systems or technology which are important in connection with the protection of the security of the Czech Republic or its internal or public order.

The application of the new FDI regime will be limited to investors whose residence is located outside the EU as well as to investors directly or indirectly controlled by persons whose residence is located outside the EU. Similar rules will apply to the residence of fund managers.

### INDUSTRIES AND CRITICAL INFRASTRUCTURE

Not all transactions will automatically fall under the scope of the FDI Act. Pursuant to the new regime, only investments in targets active in the following industries (the "**Specified Industries**") require approval<sup>2</sup>:

- manufacturing, research, development, innovation or ensuring the lifecycle of arms and military equipment,

<sup>1</sup> Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union

<sup>2</sup> The approval will not be required for a specific type of foreign investment which is made as a part of a recovery procedure or similar procedure pursuant to the Czech Act No. 374/2015 Coll., the Financial Market Recovery and Crisis Management Act, or urgently needed to avert the failure of a financial institution.

- critical infrastructure,
- critical cyber-security infrastructure, and
- dual-use items (items, including software and technology, which can be used for both civil and military purposes).

Critical infrastructure is to be selected pursuant to the "cross-sectional criteria" specified in detail in governmental regulation and will impact the following industries - energy, gas, heat and water management, food and agriculture, healthcare, transportation, communication and IT systems, financial markets, emergency services and public administration.

Furthermore, certain investments in media businesses will trigger a mandatory consultation process. Based on the outcome of the consultation, the Ministry of Industry and Trade (the "**Ministry**") may initiate an examination of the investment. In cases of other investments, consultations are voluntary.

If the investment can compromise the security of the Czech Republic or its internal or public order and the consultation did not take place, the Ministry may initiate the investigations up to five years after closing of the transaction.

## **POWERS OF THE MINISTRY**

A transaction in scope of the FDI Act will be subject to approval by the Ministry. The Ministry will be able to prohibit the investment or its continuation if the investment has already been made. In general, the approval of the Ministry will be required prior to completion of the FDI transaction.

The Ministry will have 90 days to issue its approval, with additional 30 days in particularly complex cases.

The Ministry will be able to initiate an examination of the foreign investment even after the above stated five-year period:

- if the foreign investor did not seek the approval for the investment in the target active in the Specified Industries, and
- if the foreign investor concealed facts which, if disclosed, would allow the Ministry to initiate the examination proceedings in the five-year time limit.

Any foreign investor will be able to request the consultation with the Ministry. Such consultation would be advisable especially for transactions involving targets, where the application of the FDI Act is not completely straightforward. The intertemporal provisions of the FDI Act provide that the Ministry will not examine the investments completed before the FDI Act becomes effective. However, in case a change in the controlling entity of the foreign investor occurs after the FDI Act's effectiveness, such investment could be retroactively examined.

## **SANCTIONS AND CONSEQUENCES OF BREACH**

If the prior approval of the Ministry is required and not obtained, the transaction cannot be carried out. If the transaction is carried out anyway, it will be invalid under Czech law. Non-compliance with statutory obligations may also result in administrative fines, up to the amount of 2% of the turnover of the foreign investor (or up to approximately USD 4.5 million, if the turnover cannot be determined).

## CONTACTS



**Alex Cook**  
Managing Partner  
**T** +420 222 555 212  
**E** alex.cook  
@cliffordchance.com



**Stanislav Holec**  
Senior Associate  
**T** +420 222 555 251  
**E** stanislav.holec  
@cliffordchance.com



**Martin Urban**  
Junior Lawyer  
**T** +420 222 555 542  
**E** martin.urban  
@cliffordchance.com



**Tereza Dřimalová**  
BD & Communications  
Manager  
**T** +420 222 555 530  
**E** tereza.drimalova  
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, Jungmannova Plaza,  
Jungmannova 24, 110 00 Prague 1, Czech  
Republic

© Clifford Chance 2021

Abu Dhabi • Amsterdam • Barcelona • Beijing •  
Brussels • Bucharest • Casablanca • Dubai •  
Düsseldorf • Frankfurt • Hong Kong • Istanbul •  
London • Luxembourg • Madrid • Milan •  
Moscow • Munich • Newcastle • New York •  
Paris • Perth • Prague • Rome • São Paulo •  
Seoul • Shanghai • Singapore • Sydney •  
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement  
with Abuhimed Alsheikh Alhagbani Law Firm  
in Riyadh.

Clifford Chance has a best friends relationship  
with Redcliffe Partners in Ukraine.