



# Czech Republic

## Regulation

FUNDS AND FUND MANAGEMENT 2009

### 2.1 Types of funds

A collective investment scheme in the Czech Republic can be organized as the following:

- Standard funds (UCITS)
- Special funds for public
  - Special securities fund
  - Special real-estate fund
  - Special fund of funds
- Special fund of qualified investors, that is for financial institutions and other individuals and corporations that declare in writing that they have experience with investing in securities

Standard funds and special real-estate funds can be created as open-ended mutual funds only.

Closed-ended mutual funds may be set up only for a limited period of time. Afterwards, they either have to be liquidated or transformed into open-ended funds.

Other special funds can have the form of:

- an open-ended mutual fund,
- a closed-ended mutual fund or
- an investment fund

Units in a mutual fund are called participation certificates and units in an investment fund are called shares.

Mutual funds are not legal entities; rather these are aggregates of assets belonging to unitholders and managed by an investment company.

An investment fund can be established only as a joint-stock company, it is a separate legal entity that accumulates financial resources by issuing shares.

An investment company can be established only as a joint-stock company.

A license issued by the Czech National Bank (CNB) is required to establish an investment company, an investment fund or a mutual fund.

### 2.2 Laws

The regulation of the above schemes is governed by the Collective Investment Act (CIA), recently significantly amended.

### 2.3 Managers, trustees, and custodians

#### Managers

The equity of an investment company may not be lower than an equivalent of EUR 125,000.

For a mutual fund, an investment company accumulates financial resources through the issue of participation certificates, from which it creates the mutual fund (close-ended or open-ended). At the same time, the investment company manages the portfolio of these mutual funds.

An investment fund can manage its portfolio on its own, or an investment company approved by the CNB can act as a manager of the investment fund's assets based on a management contract.

The fee of an investment company for the management of a mutual fund or an investment fund can be agreed in several ways. It is either agreed as a percentage of the average annual value of the mutual or investment fund equity or as a percentage of accounting profit before tax of a mutual fund or an investment fund or based on yearly increase in the fund's NAV. The first and the last method can be combined.

The fee covers miscellaneous expenses of the investment company incurred when managing the funds.

Investment companies and investment funds cannot issue bonds.

Investment companies and investment funds can execute transactions in securities only through a licensed stock broker or securities trader.

There are no restrictions based on residency of shareholders of the investment company or investment fund. Changes in ownership structure leading to significant holding (equal or exceeding 10 percent) by one shareholder are subject to approval by the CNB.

#### Custodians

Every investment and mutual fund must have a depositary (a custodian of a fund). Only a licensed bank with registered seat in the Czech Republic or a foreign bank with a branch in the Czech Republic can carry on the depositary activity.

The custodian is obliged to check whether the activities of the investment company or the investment fund are in compliance with CIA and the statute of the investment fund or mutual fund and to custody the property of the fund of collective investment.

Should the custodian find out that the investment company or the investment fund have acted in contradiction to the Collective Investment Act, the statute of the investment fund or mutual fund, the contract with the custodian, or the management contract, the custodian must inform the CNB without undue delay.

As a general rule all collective investment funds which are managed by one Investment Company are obliged to have the same depositary. However, certain exemptions to this rule exist.

Members of the board of directors and other persons in lead of the fund or investment company must be independent of the custodian unless the investment fund or investment company and the custodian are members of the same group.

There are no limits imposed on the fees of custodians.

#### 2.4 Investment restrictions

A standard fund may purchase only securities, certain financial derivatives or place deposits in a special bank account.

Generally, the value of securities (such as shares, bonds, and money market instruments) issued by one issuer may not represent more than 5 percent of the value of asset of the standard fund. The fund may, in accordance with its statute, increase the above limit to 35 percent for government securities (including foreign), to 25 percent for bank bonds and to 10 percent for other securities.

The portfolio of a standard fund may not comprise of securities that represent more than 10 percent of the total nominal value of securities of one class which were issued by one issuer.

There can be special funds for public for specific classes of assets (such as securities, real estate, etc.). Special investment restrictions apply to these types of funds.

No restrictions are laid down by CIA for special funds of qualified investors. Limits for risk diversification by these funds must be laid down in the statute.

### 2.5 Borrowing

Generally, both standard and special funds may take only short-term credits and loans with a maturity period of no longer than six months. The value of such credits and loans may not exceed 10 percent of the asset value of the fund.

Different rules apply in case of special real-estate funds. They may take credits and loans with a maturity period of up to 12 months and value of up to 20 percent of the asset value of the fund. Special treatment applies for mortgages on real estates in fund's property.

No restrictions are laid down by CIA for special funds of qualified investors. Rules for receiving and granting loans by these funds should be laid down in the statute.

### 2.6 Accounts, statute, and prospectus

Every investment fund or mutual fund must have its own statute, that is, a document which defines the fund's investment policy and provides information about the fund to current and perspective investors.

An application for a license to establish an investment fund or mutual fund must be submitted together with a draft statute of an investment fund or a mutual fund to the CNB. It is not necessary to enclose a prospectus where units of the fund are issued as non-registered securities.

A management report should be published semiannually. The content of the management report is specified in CIA. Only limited reporting requirements are laid down for funds of qualified investors.

Investment companies, investment funds, and mutual funds are obliged to have their annual financial statements audited.

### 2.7 Supervision

As of 1 April 2006, the Czech National Bank in Prague is the regulatory body for investment companies, mutual funds and investment funds according to CIA.

The address is:

Ceska narodni banka  
Na Prikopeč28  
115 03 Praha 1  
Tel.: +420 224 411 111  
Fax: +420 224 412 404, +420 224 413 708  
Web: [www.cnb.cz](http://www.cnb.cz)

## 2.8 Fund ownership

Any acquisition of shares as a result of which one person (or a group of persons acting in concert) acquires a direct or indirect share in voting rights or registered capital of an investment company, or an investment fund equal or exceeding 10 percent is subject to a prior approval by the CNB. The permission is also necessary for any qualified share 20 percent, 33 percent, or 50 percent.

The CNB should be informed about any reduction of holding in voting rights or registered capital below these limits.

Minimum equity of an investment fund upon its establishment is an equivalent of EUR 300,000 unless the assets of the investment fund are managed by an investment company based on a management agreement (in such a case, only the minimum amount of registered capital of CZK 2 million applies). Equity of a mutual or investment fund must exceed CZK 50 million within one year from its establishment.

## 2.9 Fund structure

Umbrella funds are not possible.

Generally, shares of an investment fund or participation certificates in a mutual fund can be issued as registered securities transferable by endorsement or a bearer securities. Articles of association cannot restrict transferability of shares issued by an investment fund.

Transferability of units of special funds of qualified investors is restricted in order to ensure that only qualified investors acquire the units of these funds.

## 2.10 Stock exchange

A stock exchange quotation is available for Czech funds under the same conditions as are required for other securities. The fund prospectus serves as a registration prospectus. Foreign funds' shares can be listed on the Prague Stock Exchange provided that requirements stipulated by the law are fulfilled.

## 2.11 Bank secrecy

The Czech Republic has laws which can be applied in order to obtain information from financial institutions in cases of alleged money laundering.

Financial institutions should identify parties in transactions of over EUR 15,000. In case of transactions in cash, the identification limit is set up to amounts over EUR 1,000. All suspicious transactions should be reported to the Ministry of Finance.

## 2.12 Fund set-up

An investment company or investment fund can be set up only with permission from the CNB.

The investment company must be registered in the Commercial Register. The registration can take over three months. KPMG in the Czech Republic estimates that the total time for setting up the investment company or investment fund can take more than six months.

The minimum share capital of an investment company or an investment fund amounts to CZK 2 million. However, CIA regulates equity as well (see Section 2.8).

The application fee for setting up an investment company or an investment fund amounts to CZK 50,000. The application fee for a permission to issue participation certificates (units) of mutual funds amounts to CZK 20,000 per mutual fund. The CNB can charge the investment company or the investment fund other fees, such as a fee for change of statute etc., which may range from CZK 1,000 to CZK 10,000. In total, these obligatory sundry fees amount up to EUR 3,000. In addition to this, one should also take into account fees charges by legal advisors for their services in connection with the fund or investment company established.

## 2.13 Foreign funds

If a foreign person pursuing collective investment, meeting the conditions of a European license according to Directive No. 85/611/EEC and having its registered office in the territory of a Member State of the European Union or another Member State of the European Economic Area, intends to offer or sell securities in the Czech Republic, it is obliged to inform the CNB and to conclude a special contract with a Czech bank or foreign bank which has a branch on the territory of the Czech Republic.

## 2.14 Bearer shares

An investment company may only issue registered shares, but there are no restrictions on the issue of shares (units) in bearer form by investment funds and mutual funds (except for fund of qualified investors – they should not have bearer form since their transferability is restricted).

## 2.15 Use of the internet

There are no legal restrictions on the use of web pages as a marketing tool in the Czech Republic. Use of the internet by financial institutions is a common practice. There are also some websites that collect information about investment and mutual funds.

The main aspects of advertisement of funds are generally regulated by CIA. It is not permitted to use untrue or misleading information or to conceal facts that are important for decisions of current or future stockholders.

Units of fund of qualified investors may not be publicly offered or promoted.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.