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Introduction

James Turnbull

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1. **A brief history of *svěřenské fondy***

A *svěřenský fond* is the Czech version of a common law trust (for simplicity, we shall use the term ‘Czech trust’).

It shares most of the features of the trusts typically found in common law jurisdictions. However, the Czech Republic is a civil law jurisdiction, and as a consequence, while the practical results are often the same, the underlying legal basis is quite different.

1.1 **History**

Many people think that trusts are new to the Czech Republic, having only been introduced as part of a new Civil Code in 2014. This is true, but not true. In fact, trusts have a much longer history which, at the risk of oversimplifying a complex story, we attempt to present here.

In the 17th century, Czech lands became part of the Hapsburg monarchy. This change brought with it the importation of concepts similar to a trust from the Austrian lands. These trust-like structures flourished, especially during the reign of Ferdinand II, who sought to destroy the economic power of noble estates and non-Catholic religions through confiscations following the Battle of White Mountain in 1620. As a result, relatively large property portfolios were created, and these trust structures were an ideal tool to consolidate such holdings.

These structures flourished for many years, with attempts to limit or even cancel them coming only in the second half of the 18th century during the reigns of Maria Theresa and Joseph II. However, the trust was not completely abolished until 1924 after the formation of an independent Czechoslovak State.¹

There followed a period of 90 years in which we saw many fundamental changes to the Czech state and Czech society including, most significantly, World War II, the rise and subsequent fall of the Communist regime, and the peaceful divorce of the Czech Republic and Slovakia. During this period, trusts were neither part of the Czech legal system nor recognised under Czech law. Not surprisingly, the Czech Republic did not sign the Hague Trust Convention.

1 Act No 179/1924 Coll.

This state of ‘trust limbo’ existed until the early 2000s, when more than 10 years of discussion culminated in a new Czech Civil Code, which came into force in 2014.² The objective of the drafters of the new code was to align Czech private law with European traditions and to bring to an end the socialist legal regime that had dominated the pre-1989 era. An important part of this change was also focused on enabling individual freedom – as specifically expressed in Section 3(1) of the new law:

*Private law protects the dignity and freedom of the individual and his natural right to pursue his own happiness and the happiness of his family or people close to him in a way that does not unreasonably harm others.*³

The reintroduction of trusts fitted perfectly into this narrative. Prior to 2014, testamentary freedom was very limited and family business succession planning was difficult, verging on impossible.

Trusts, along with a number of other new planning possibilities introduced by the new code, gave families and family businesses a modern set of tools to plan and implement succession strategies. These tools collectively prevented the kind of injustices seen under the old law and, perhaps most importantly, made a ‘family business culture’ possible.

1.2 Canadian inspiration

The drafters of the new law were heavily inspired by the Civil Code of Quebec (CCQ), and indeed Quebec provided an excellent model. First, like the Czech Republic it is a civil law jurisdiction. Secondly, Quebec law had a track record of success in this area – trusts had existed without problems since 1991.

There are some differences between the Quebec and the Czech implementations, but the two models are very close. Compare, for example, Section 1294 of the CCQ⁴ with Section 1469 (1) of the Czech Civil Code.⁵ Here is an English translation:

On the application of a person with a legal interest therein, a court may decide that a trust be cancelled if it is impossible or difficult to achieve its purpose, primarily due to circumstances unknown or unforeseeable to the founder.

2 Act No 89/2012 Coll. the Civil Code. Available (Czech language only) at: www.zakonyprolidi.cz/cs/2012-89#cast5. An English translation is available at: <http://obcanskyzakonik.justice.cz/images/pdf/Civil-Code.pdf>.

3 Section 3(1) of the Czech Civil Code.

4 Section 1294 of the Quebec Civil Code:

Lorsqu'une fiducie a cessé de répondre à la volonté première du constituant, notamment par suite de circonstances inconnues de lui ou imprévisibles qui rendent impossible ou trop onéreuse la poursuite du but de la fiducie, le tribunal peut, à la demande d'un intéressé, mettre fin à la fiducie; il peut aussi, dans le cas d'une fiducie d'utilité sociale, lui substituer un but qui se rapproche le plus possible du but original.

5 Section 1469 (1) of the Czech Civil Code:

Soud může na návrh osoby, která na tom má právní zájem, rozhodnout, že svěřenský fond zruší, pokud je dosažení účelu svěřenského fondu nemožné nebo obtížně dosažitelné, zejména následkem okolností zakladateli neznámých nebo pro zakladatele nepředvídatelných. Jedná-li se o svěřenský fond zřízený za veřejně prospěšným účelem, může soud rozhodnout, že jeho původní účel nahradí podobným účelem.

Where a trust has been established for a publicly beneficial purpose, a court may decide to replace its original purpose with a similar one.

Just for clarity, this is a translation into English of both those sections. They are exactly the same – that is very close inspiration indeed!

Of course, not all sections are identical; indeed, there are some important differences. For example, a Czech trust must be established by way of a notarial deed, and a private trust in Quebec must have a determined or determinable beneficiary,⁶ which a Czech trust does not require, as we shall see below.

However, at their heart, Czech trusts and Quebec trusts are substantially the same. This is a very positive thing for the Czech model because it means that it is not really ‘new’ at all. The Quebec trust has a history dating back to 1995, since when it has functioned without problems.

Despite the fact that the new law offered a proven model and delivered excellent solutions to previously insoluble problems, it was greeted initially with a mix of bewilderment, scepticism and even fear. In the first month of the new law, just one Czech trust was established, and by the end of 2014, the cumulative total was just 49. The following year was not much better, with just 75 trusts established.

The reasons for this underwhelming initial response are to some extent understandable. They include the following:

- There was no recent history or tradition of trusts in the Czech Republic and no ‘core knowledge’ of this new institution and its potential.
- Czech people and the Czech legal profession are conservative by nature.
- Many Czech lawyers were overwhelmed at this time by a complete novelisation of the entire Civil Code. They tended to be focused on coming to grips with the changes that affected their core areas of practice and did not have the time or inclination to look into new and, from their perspective, irrelevant, parts of the code. This resulted in low levels of basic knowledge of trusts amongst the legal profession – a problem that, even after 10 years, sadly persists.

There were other, less understandable factors behind the initially poor take-up:

- The response from normally professional and well-respected transparency and anti-corruption NGOs was very disappointing. Again, this was mostly driven by misunderstanding and lack of knowledge. The core of the response was the rather simplistic argument that trusts were primarily tools for international tax evasion and money laundering. We do not, so the argument went, want to encourage such things and therefore trusts should be removed from Czech law. These arguments

6 Section 1267 of the Quebec Civil Code.

were made quite forcefully,⁷ without any evidence that Czech trusts would (or could) be used in this way and without recognition or understanding of the substantial benefits the new institution offered ordinary families.

- The media, and especially the tabloid media, picked up on these ill-informed arguments and press releases and ran articles focusing on the perceived potential for misuse. Headlines such as, “How to launder money after the New Year? The Civil Code will introduce trusts”⁸ meant that although the general public did not know much about trusts, what they did know was that they were not good – that they were tools for criminals, not for ordinary families.
- This frenzy was in turn picked up by politicians, in some cases for populist reasons and in others from a genuine belief that trusts were not needed. Examples included the then deputy ministers of justice, JUDr Hana Marvanová and JUDr Robert Pelikán (later minister of justice). There were various discussions and pronouncements at top levels about the need to amend or revoke the new trust law.

All of this had a chilling effect and essentially prevented the use of trusts for any serious purpose due to the likelihood that they would be abolished.

Some of this uncertainty was removed as a result of the conclusions of an expert working group of the Ministry of Justice that took place in May 2014. From that point on, the future of trusts in the Czech legal system became more certain. However, it was hardly an auspicious start.

2. **Lex Babiš**

In January 2017 there were a total of 226 trusts in existence in the Czech Republic. Then an amendment⁹ to the Conflict of Interest Act,¹⁰ also known as Lex Babiš, was approved. The new law prohibited government officials from owning media and receiving state subsidies through their companies. As a result, controversial Czech prime minister Ondrej Babiš transferred shares in his businesses to two Czech trusts that he had established for the purpose. These trusts were not effective as ‘blind trusts’ as there was no effective separation of control from the founder. However, they were sufficient to satisfy

7 See, for example: <https://nfpk.cz/aktuality/o—hrozba-jmenem-sverensky-fond>.

8 See Jiří Táborský, “*Jak vyprat peníze po Novém roce? Občanský zákoník zavede trusty*” (“How to launder money after the New Year? The Civil Code will introduce trusts”), *Lidové noviny*, 22 December 2013. Available at: www.lidovky.cz/byznys/jak-vyprat-penize-po-novem-roce-obcansky-zakonik-zavede-trusty.A131220_173815_firmy-trhy_mev. See also Jan Januš and Jan Klesla, “*Robert Pelikán: Svěrenské fondy v Česku k ničemu nepotřebujeme*” (“Robert Pelikán: We don’t need trust funds for anything in the Czech Republic”), *Hospodářské noviny*, 28 February 2014. Available at: <https://archiv.hn.cz/c1-61775870-robert-pelikan-sverenske-fondy-v-cesku-k-nicemu-nepotrebujeme>.

9 14/2017 Coll.
10 159/2006 Coll.

the requirements of the new law. This development was significant only in that it generated a huge amount of media coverage for trusts. Public awareness jumped as a result, as did the number of new trusts established.

3. Trust registration

The next major development occurred in January 2018, by which time there were around 522 trusts in existence. This was the introduction of a register. From this point forward (July 2018 for pre-existing trusts) all trusts had to be registered on the Czech Register of Trusts. This new legal requirement created some additional paperwork and compliance obligations for trustees, but was almost universally welcomed for two reasons. First, it put to rest any lingering concerns regarding the potential criminal misuse of trusts. Secondly, it meant that each trust was issued with an identification number, equivalent to those issued to companies and other legal entities. This in turn made it far easier for trustees to deal with state organs, banks and other similar organisations – for whom the existence of that number was vital.

Since then, the number of trusts and their usage and acceptance has continued to grow. As of August 2023, there were around 4,500 Czech trusts in existence.

The future looks assured. However, many issues remain, including:

- a lack of proper expertise by much of the professional community;
- a resulting large number of very poorly constructed trusts, which will create significant issues in the years ahead;
- strong residual resistance from many parts of the legal community; and
- a continued lack of widespread public knowledge of the benefits and uses of trusts.

With time, we can only hope that the situation will continue to improve.

This Introduction by James Turnbull is from the title *Trust Laws in the Czech Republic and Hungary*, published by Globe Law and Business.

<https://www.globelawandbusiness.com/books/trust-laws-in-the-czech-republic-and-hungary>