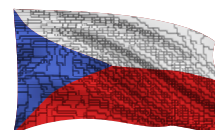




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Significant ruling on the COMI definition in the Czech Republic: The Arca Investments Case



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Arca Investments a.s. (the “Debtor”) is a Slovak holding company for the Arca Group, whose activity takes place mainly in the Czech Republic and Slovakia. In January 2021, the Debtor filed for insolvency at the Prague Municipal Court, due to its inability to meet its liabilities to at least 1889 creditors amounting to more than CZK 18.6 billion.

The Debtor and several of its creditors sought to open main insolvency proceedings in the Czech Republic under Article 3 of the European Insolvency Regulation (Recast). However, the Municipal Court in Prague considered that, as a Slovak entity, the Debtor’s COMI was located in Slovakia and, therefore, the Czech courts only had jurisdiction to open territorial insolvency proceedings.

After multiple appeals, the Prague High Court has reversed the decision of the Prague Municipal Court and has opened main insolvency proceedings in the Czech Republic. Based on the factual circumstances, the Prague High Court agreed with the contention that the Debtor’s COMI was in the Czech Republic, effectively rebutting the legal presumption that the COMI of a legal person is situated in the Member State of

its registered office.

More importantly, the Debtor argued that the majority of its creditors was from the Czech Republic and most of them were of the view that the COMI was in the Czech Republic. Since most of the creditors were retail investors, the Debtor was able to collect the necessary data through questionnaires via established communication channels. Moreover, the Debtor’s largest creditors also supported this view.

Moreover, the High Court in Prague deemed that, *inter alia*, the following proven facts played a substantial role in determining the Debtor’s COMI:

- a significant part of the Debtor’s operational management was carried out through a Czech company;
- the management of the Debtor was situated in the Czech Republic, where it made essential decisions;
- the only member of the Debtor’s board of directors lived in the Czech Republic, where both ordinary business decisions and strategic decisions were made;
- only support functions were carried out at the Debtor’s registered office in Slovakia;
- the place of performance under most of the promissory notes issued by

the Debtor was in the Czech Republic; and

- the Debtor’s legal advisors, financial capital, tangible assets and IT systems were all located in the Czech Republic.

The Prague High Court also stated that the Prague Municipal Court should not have accepted uncritically the minority view expressed by a few dissenting creditors who argued that the location of the Debtor’s registered office was in Slovakia. The Prague High Court argued that, compared to the extensive presence of the Debtor in the Czech Republic, the location of its registered office in Slovakia could not amount, without more, to the COMI being in Slovakia.

For all of the above-mentioned reasons, the Prague High Court concluded that the Czech Republic was clearly ascertainable by third parties (mainly creditors) as the place where the COMI was situated and, therefore, the legal presumption that the COMI was located in Slovakia could be rebutted. ■