

Introduction

Czech banks operate in a constantly developing legal environment. The need for changes in the Czech legislation is linked to the accession of the Czech Republic to the EU (1.5.2004) whereby the harmonization of domestic legal norms with the *acquis communautaire* has become mandatory. Also the acceptance of the Czech Banking Association as a regular member of the European Banking Federation (FBE), effective from 1 July 2005, encourages accession to and gradual implementation of standards proven in practice, their gradual implementation and use.

Banks licensed for trading with securities with dominant position on the Czech capital market appreciate the possibility to utilise standard practices and norms not only because of their foreign owners. They see this development as an objective process, contributing to higher level, stability and efficiency of functioning on the Czech financial market. There is a general consensus that the application of bilateral contracts increases costs of contractual administration and adds to legal risk of counterparts, particularly in the transactions without symmetrical transfer of business parameters, like for instance in back-to-back transactions.

The Czech Banking Association ("CBA") as a participant of the Czech legal process repeatedly pointed out to the fact that some contractual terms for financial transactions are becoming obsolete and for some others there is a deficit of unified standard contractual documentation, acceptable for most participants in the capital market.

For these reasons the CBA Commission for Capital Market and Securities initiated the preparation of standardised contractual documentation for domestic OTC transactions with financial instruments (for cross-border transactions there are suitable standards like ISDA or ICMA or other accepted model contracts, while similar standards for domestic transactions are not available). The respected law firm Procházka, Randl, Kubr participated on the draft project of this documentation.

This model documentation should replace the diverse contracts and fragmented bilateral contractual documentation used so far. Therefore banks as dominant players on the Czech OTC market with financial instruments and members of the Czech Banking Association decided to standardise contractual documentation for financial transactions.

The new contractual documentation is adapted to current valid Czech legislation with maximum regard to the enforceability of claims, especially to close-out-netting. Product annexes of the master agreement cover instruments like repo or buy-back operations and derivatives, and are optional.

Master documentation described above is based on the principles of the European Master Agreement (hereafter "EMA")¹, a model contract prepared

¹ "The Master Agreement for Financial Transactions, commonly known as the European Master Agreement (EMA), is a highly innovative, multi-language, multi-jurisdictional and multi-product

and recommended by the European Banking Federation (FBE) jointly with the European Saving Bank Group (ESBG) and the European Association of Co-operative Banks (EACB).

EMA as a FBE standard is a modular master agreement, providing a possibility to resolve legal aspects of multifaceted transactions according to the national law by opting for specific product annexes. EMA gives the counterparts a right to choose the decisive law, jurisdiction and language and to regard various specific legal requirements of the respective country. EMA provisions – in connection with the described objectives – were modified for an application on the Czech financial market.

In order to achieve maximum compatibility between EMA and its Czech modification only absolutely necessary modifications were introduced into the domestic version of the EMA. These are commented in the Explanatory Memorandum.

Czech Master Agreement (“CMA”) – like EMA – consists of general and special provisions, product annexes for repo transactions, securities lending, transactions with derivatives (incl. addendum for interest rate transactions, options and foreign exchange transactions) and a collateral management attachment. Index of defined terms is also a part of the documentation.

Preparation of the Czech Master Agreement has been consulted with the European Banking Federation. FBE was informed that regard to the Czech financial legislation and Czech bankruptcy legislation makes it impossible to merely translate the EMA into the Czech language and this would lead to minor modifications. Therefore the Czech Master Agreement will be not considered a FBE standard.

FBE agreed with an application of the reference to its master document and the Czech Banking Association is thus permitted to put in the following preamble to the CMA: “Czech Banking Association on the basis of the master documentation issued by the European Banking Federation....”. This is also how the documentation is prepared.

In this context the FBE recommends that the CBA replace this Czech agreement by a “regular” EMA version (i.e. merely translated and commented), also in line with the progressing integration of the Czech Republic into EU legal environment within a time horizon of five years.

In order to achieve a harmonised approach of banks to trading on financial markets and to set up certain general standard for financial transactions of banks, the **Czech Banking Association issues Master Agreement for Financial Transactions**, prepared on the basis of the model documentation of the FBE, **as CBA Banking Activities Standard No. 20/2006**.

CBA is convinced that this Standard will significantly contribute to the enhanced transparency and liquidity of the Czech financial market. CBA believes that this documentation will be widely applied by member banks in their mutual transactions, in transactions with the CNB and with major non-bank financial institutions as well.

agreement, sponsored by the FBE, in cooperation with the European Savings Bank Group and the European Association of Cooperative Banks...”.

Positively contributing to the activities of banks is the fact that by using CMA banks can effectively decrease the capital requirement, as the agreement works with the concept of close-out netting.

Also important is the fact that CMA will become a standard for financial markets trading of banks with the Czech National Bank.

CBA invites all member banks to apply this Standard and to include it into their internal rules. At the same time CBA recommends to its member banks to inform their clients and the public accordingly.

CBA also invites all important Trade Associations active in the Czech financial market to adhere to this model agreement.

Model documentation is issued in Czech and English language versions. Both texts are equally valid and contract parties may elect any language version. For the avoidance of doubt the election should be explicitly recorded in the agreement.