



## Contractual relations relating to the development of software in the Czech Republic



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|   |  |
|---|--|
| 3 | <b>Introduction</b>  |
| 4 | <b>Copyright law in the Czech Republic</b>                               |
| 4 | <b>Contractual relationship regimes when developing software</b>         |
| 5 | Software development under an employment law relationship                |
| 5 | Summary – The employment law relationship when developing software       |
| 6 | Development of software via a business who is a natural person           |
| 6 | Summary – Development of software via a business who is a natural person |
| 7 | Development of software via a legal person                               |
| 7 | Summary – Development of software via a legal person                     |
| 8 | <b>Contract for Work Done</b>  |
| 9 | <b>Conclusion</b>  |





## Introduction

**Setting up legal relationships for the development and supply of software is a prominent area of our expertise. In the nearly two decades of our existence, we have helped set up legal relationships for hundreds of software projects. As we regularly see misunderstandings arising from the specifics of the Copyright Act in the Czech Republic, we have decided to prepare this guide. We would like to briefly introduce the pitfalls of the Czech law regarding the rights of an author, which is the law that governs relationships in the field of software development and to introduce potential ways of setting up contractual relationships when developing software in the Czech Republic. We would especially like to help foreign clients who intend to develop software in the Czech Republic to navigate Czech law.**



## Copyright law in the Czech Republic

The Czech legal environment originates from the continental legal culture and the concept of the rights of an author in the Czech Republic significantly differs from the concept of copyright in Common Law. The crucial difference is that the author of the software (source code of a computer program) must be exclusively a natural person (or several natural persons). A further important specific, which may result in a number of misunderstandings, is the statutory non-transferability of the rights of an author. Czech legislation does not recognize the transfer of an author's rights, and it is thus not possible to "change" the author of a computer program. This, however, does not mean that it is not possible to obtain certain rights to a computer program from its author, i.e., the developer of the software, and to use it freely in a business sense (copy, sell, distribute, etc.).

For these situations, Czech law allows a transfer of the right to exercise the proprietary rights of an author. Acquisition of the right to exercise the proprietary rights of an author from an author of a computer program is similar to the acquisition of ownership to an extent, and it allows the acquirer of the right to use the completed computer program as is desired. It is, of course, also possible to regulate relationships with software authors on a license basis.

These are key starting points which it is necessary to bear in mind when drawing up a relationship between a client and a software developer.



## Contractual relationship regimes when developing software

In the Czech Republic, **there are three basic regimes that can be used to set up contractual relationships with software developers.** It is questionable whether, in practice, the client is always free to choose a contractual regime because the specific developer may already prefer one of the specified regimes. The choice of the regime of contractual relationship should, however, feature in negotiations because specific rights and obligations for both contractual parties as well as specific costs and risks vary between the regimes.

## 1. SOFTWARE DEVELOPMENT UNDER AN EMPLOYMENT LAW RELATIONSHIP

This regime is based on a Contract of Employment or a Contract for Work Carried out Outside Employment between the client and the developer. It can be a standard full-time or part-time contract. It can also be an Agreement to Complete a Job or an Agreement to Perform Work which, subject to some limitations, allow a more flexible set up of relationships between an employer and an employee in the Czech Republic. In this regime, the developer of software, a natural person, becomes an employee of the client and develops a computer program for them in return for an agreed salary.

The key advantage of this contractual regime is an automatic statutory transfer of the so-called right to exercise proprietary rights of an author from the developer of software (i.e., the employee in this regime) onto the employer.

Setting up contracts is not particularly difficult from an authorial rights point of view in this regime. It is important to specify properly the rules for the setting and handing over of work, as well as to specify in the Contract of Employment that the employer has a right to assign the exercise of proprietary rights of an author to third parties. Such consent may form part of the Contract of Employment. We further recommend addressing in the Contract of Employment matters such as overtime or work outside of a working day, and the mechanism that will be used to hand over the completed computer program. This may prevent disputes regarding whether or not the computer program was properly completed whilst the employee discharged their employment obligations towards the employer.

We must also mention that in this regime, the client as an employer must comply with all duties arising from employment law and other related regulations. This includes costs relating to administration, mandatory reporting, payment of taxes, health, and social insurance, etc. Further, it is necessary to respect limitations e.g., in the field of liability for the employee's loss, the ability to issue penalties or prohibition of competition. Czech employment law is relatively rigid, and employment law documentation should always be discussed with a lawyer who specializes in employment law.

### SUMMARY – THE EMPLOYMENT LAW RELATIONSHIP WHEN DEVELOPING SOFTWARE

- **The relationship between the client and the developer of the software is a relationship between an employer and an employee.**
- **There is the automatic passage of the right to exercise proprietary rights of an author from the developer to the employer. The employer may use the completed source of the software as desired.**
- **It is a contractual relationship regulated by the Employment Code and other regulations which gives rise to administrative obligations and expenses connected with the employment.**
- **The client as an employer has limited options when it comes to penalties for non-compliance by the developer with their obligations or setting up a competition clause.**

## 2. DEVELOPMENT OF SOFTWARE VIA A BUSINESS WHO IS A NATURAL PERSON

This regime is used very frequently to regulate the development of software in the Czech Republic. It is a relationship where the software developer acts as a so-called contractor, i.e., a natural business person with a trade license (in the Czech Republic, this type of business is called "OSVČ" – a person with independent gainful activity). The developer of software becomes a producer who creates software for the client in return for agreed remuneration which is invoiced to the client.

A Contract for Work Done is normally concluded in this regime. Where there is longer-term cooperation between the client and the developer of software, a Framework Contract for Work Done is used most frequently.

In this regime, the right to exercise proprietary rights of an author to the completed computer program also passes to the client automatically. It is important for the contractual relationship to specify properly the formalities of the placing and acceptance of an order as well as the completed work, i.e., the computer program itself. Our basic recommendations as to what should be included in a Contract for Work Done are set out in the next chapter. We need to flag up that in this regime, rights to any graphic elements of the software (graphic interface) do not pass to the client, and rights to graphics thus need to be set out in a licensing agreement.

Given that this is not an employment law relationship between an employer and an employee but a relationship between two business subjects, there is more freedom in terms of choice of penalties, such as when deadlines for supply of a computer program are not complied with, as well as the ability to limit

competition, although even here there are some statutory limitations.

In this regime, the client does not have the rights and obligations referred to in the context of an employment law relationship. It is, however, important to note that this regime must not replace dependent work (within an employment law relationship).

### SUMMARY – DEVELOPMENT OF SOFTWARE VIA A BUSINESS WHO IS A NATURAL PERSON

- **The relationship with a developer of the software is a relationship with a business subject (producer).**
- **The right to exercise proprietary ownership rights automatically passes to the client.**
- **The client does not bear the obligations and expenses connected with an employment law relationship.**
- **This relationship must not replace dependent work which, according to the Employment Code, means work carried out in a relationship of the superiority of the employer and subordination of the employee, in the name of the employer, in accordance with the employer's instructions, and carried out by the employee personally for the employer.**
- **Despite the higher contractual freedom when compared with an employment law relationship, even here there are limitations when it comes to agreeing on a competition clause, etc.**

### 3. DEVELOPMENT OF SOFTWARE VIA A LEGAL PERSON

In this regime, the developer of the software is a legal person – producer (in the Czech Republic, this is typically a limited liability company), who creates a computer program for the client in return for remuneration which is invoiced. In this regime, the developer of software acts again as a producer, and the contractual relationship normally takes the form of a Contract for Work Done or a Framework Contract for Work Done.

However, setting up a contractual relationship in this regime is considerably more complicated from the client's point of view. As we explain above, a legal person (producer) cannot be an author, and the right to exercise the proprietary rights of an author to the completed computer program thus does not pass to the client automatically.

In practice, two main methods are used. The first, less frequent method, is an assignment of the right to exercise the proprietary rights of an author from the producer (who acquires this right from the authors) to the client. This is based on an important prerequisite that the developer of software, in this regime a legal person, has acquired consent from its employees, i.e., the legal authors of the supplied computer program, to assign the right to exercise proprietary rights of an author to the client. It is also for these reasons that this method is not particularly popular in practice.

More often, this relationship is dealt with by way of a license to the computer program being created, and the scope of this license, as well as

the extent of the client's other rights (including access to the source code), depends on the contractual parties' negotiating strength. It is possible to agree to various models including one where the producer is not left with any rights to the software. However, from the client's point of view, it is important to be extra-cautious when using this model because of the principle that the client does not have rights that are not explicitly specified in the contract. It is therefore in the client's interest to ensure that there is a comprehensive contract in place.

In this relationship, it is possible to set up payments, guarantees, penalties for non-supply of the software, and a competition clause on a flexible basis. There are no additional expenses connected with administration and mandatory reporting.

#### SUMMARY – DEVELOPMENT OF SOFTWARE VIA A LEGAL PERSON

- **The relationship between the client and the developer of the software is a relationship between a client and a producer.**
- **It is necessary to precisely specify the client's rights in the contract, including access to the source code of the completed computer program.**
- **There are no expenses connected with employing the software developer.**
- **It is possible to set up payments, penalties, a competition ban, and guarantees flexibly.**



## Contract for Work Done

Due to the specifics and a certain non-intuitiveness of Czech copyright law, we recommend that the issue of rights to a computer program produced to order (and potentially also the methods and extent of use of the computer program) is always agreed upon in advance and specified in a written contract together with the issue of access to the source code.

Apart from essential elements and standard clauses dealing with the definition of the subject of the work, timeframe and method of completion, date when the price of the work is due or protection of confidential information, the Contract for Work Done should address the relationships relating to commenting on and access to the source code, the testing process, and handover of the software, as well as issues relating to the provision of a guarantee, including regulation of the software developer's response timeframes. From the client's point of view, the software developer's obligations relating to the further development of the computer program in the future may also be important. Together with other services, these relationships are often set out in a separate Servicing Agreement.

A properly set up contractual relationship can prevent potential disputes arising between the contractual parties in the future in relation to their rights and obligations, including access to the source code of the computer program and the ability to use it freely. Many software companies trading in the Czech Republic draw significant inspiration from the Anglo-American legal culture (e.g., license contracts of large foreign companies). However, due to the different approach of the Czech Copyright Act as well as the fact that the Copyright Act contains a large number of peremptory (mandatory) provisions which cannot be deviated from in a contract, using these Anglo-American "templates" may often result in contractual provisions being invalid.





## Conclusion

There are many skilled software developers in the Czech Republic who offer their services for competitive prices, and the Czech Republic is thus an attractive location for the realization of software projects. In this guide, we wanted to flag up the specifics of the Czech legal framework, and to introduce the ways in which relationships between clients and software developers can be set up. We particularly wish to help foreign clients who intend to develop software in the Czech Republic to navigate Czech law.

In our legal practice, we often encounter concepts of contractual agreements which originate in the Anglo-American legal culture. However, these may not be fully suitable for the Czech legal environment. We urge caution when drawing inspiration from abroad. Even today, individual nation states of the European Union retain their own laws. Harmonization in the field of copyright law affects mainly the scope of the protection conferred by copyright law and not contractual relationships.

### Primary contact

**Josef Aujezdský** obtained his Master's degree in Law from the Law Faculty of Charles University and he is one of the authors of the eAdvokacie system which allows us to provide legal services via the internet. Josef is registered on the roll of lawyers of the Czech Bar Association and is one of the founding partners of Mašek, Kočí, Aujezdský. Josef specialises in intellectual property law (in particular the rights of an author, trademark law, law governing domain names and the protection of databases), commercial obligations (including unfair competition) and other legal aspects of trading on the internet, including matters containing an international element or relating to the application of EU law. Josef often comments on these matters in the media.



**Legal advice in the field of software development** is one of the main specializations of MKA Nosko. If you wish to discuss a specific software project, please do not hesitate to get in touch with us. You can contact us by phone or email. We will be happy to meet you in person at our offices in Prague or Bratislava.

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