

Bill of Exchange Law in Europe – 2

Requirements of Bill of Exchange and Promissory Note

JUDr. Josef Kotásek, Ph.D.

Discussion questions

- What is the major objective of „Geneva Bill of Exchange System“ (1930)?
- What are the types of commercial papers?
- What are the parties of a note? To a bill of exchange (draft)?
- What liability does a maker have on a note?
- What liability does a drawer have on a bill of exchange?
- What liability does a drawee have on a bill of exchange?
- Describe the principal types of payment via note and bill of exchange (payment by a bill of exchange (bill of exchange issued "pro soluto") and payment by means of bill of exchange (bill of exchange issued "pro solvendo"))

Promissory Note

- Special variant of a credit paper
- Promise of a drawer (maker) to pay to a creditor (payee) certain financial sum
- Characteristic expression „*I will pay*“
- Two basic participants - maker and creditor (payee).
- Maker of a promissory note is a direct debtor obliged by his sign to pay at the maturity

Promissory Note	
Brno, January 1, 2005	
I promise to pay for this promissory note to the order of Jan Král, Husova 15, Brno, the sum of 20.000,- CZK.	
at: Brno, Husova 15, 602 00	Paul Maker Husova 16, Brno (signature)

Bill of Exchange

- higher number of participants
- drawer, payee and drawee
- payment order of a drawer to a drawee to pay certain financial sum to a payee
- characteristic expression „Pay to“.

Bill of exchange	
In Prague, January 1, 2005	
For this bill of exchange pay to the order of Franck Payee the sum of One hundred USD.	
Drawee:	
Karel Nowak	
Brno, Úvoz 1	
602 00	
At: Brno, Úvoz 1, 602 00	
	Jan Pleva Brno, Joštova 8 <i>(signature of the drawer)</i> Jan Pleva

Participants of the Bill of Exchange and Promissory Note

- **Drawer (maker)**
 - maker of a promissory note obliges himself to pay at the maturity, direct debtor
 - drawer of a bill of exchange (trasant) is in a position of indirect, regress debtor (Article 9)
- **Payee**
 - person, in whose favour the bill is issued,
 - "remitent,,
 - person named on the face of the bill of exchange or a promissory note to receive payment
- **Drawee**
 - addressee of payment promise of the drawer
 - a real debtor only by the acceptance (till this moment he is obliged only potentially; under certain circumstances he even does not have to know that he became a drawee)

Participants of the Bill of Exchange and Promissory Note II

- Persons giving an **aval** guarantee
 - Section 30-32
 - special guarantee for payment of a bill ("aval,,).
 - guarantee may be given by a person who has signed the bill as well
 - the giver of an aval is bound in the same manner as the person for whom he has become a guarantor
- Parties of endorsement
 - Indorser
 - Indorsee

Form of Bill of Exchange and Note

- „Commercial Paper“ = Writing
- Certificated v. Paperless form
- The bill can not be entered in a book like shares or bonds
- Printing, typewriting, handwriting or any other tangible form
- Easily movable substance
- Degree of permanence?
 - Check on the shirt
 - Note on the tissue
 - Note on the wall
 - „Negotiable cow“
 - Bill of exchange on the back

Form of Bill of Exchange and Note

- „If there is no place for other statements, a copy of the paper (Article I, Section 67 BECA) or allonge (Article I, Section 13 BECA) can be used.

Promissory Note	
Brno, January 1, 2005	
I promise to pay for this promissory note to the order of Jan Král, Husova 15, Brno, the sum of 20.000,- CZK.	
at: Brno, Husova 15, 602 00	
Paul Maker Husova 16, Brno (signature)	

Signature

- The bill of exchange or promissory note must be signed by the drawer or maker
- The signature may be made only by handwriting by pen or pencil, not by typewriter, by print or only by stamp or fingerprints (dabs)
- Text of the paper is usually a result of filling in and signing of blank forms

Forms of writing

- UCC (USA) - § 3-114. CONTRADICTORY TERMS OF INSTRUMENT
- If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

The image shows a blank check form with the following fields and text:

- Měna Číska** (Currency Amount)
- Místo a datum vystavení (měsíc slovy)** (Place and date of issue (month in words))
- Za tuto směňku zaplatím** (I will pay for this check)
- na řád (komu)** (to order (to whom))
- Číska slovy** (Amount in words)
- Spisatel v (místo placení) u (domci)** (Payee (place of payment) at (address))
- Jméno (jméno, rozliš), adresa a podpis(y) vystavce** (Name (name, initials), address and signature(s) of the issuer)

At the bottom left, there is a small logo for "LEVT 30 001 0" and the number "1/08".

Words prevail over numbers in European Law

sum of money relating to bills of exchange expressed differently in figures and words

Měna Číslo

Místo a datum vystavení (měsíc slovy)

Za tuto směnku zaplatím

Ukáže splatnosti (měsíc slovy)

na řád (komu)

Číslo slovy

Splatnost v (místo placení) u (domci)

Jméno (jméno, rozliš), adresa a podpis(y) výstavce

ČÍSLO 30 001 0 1/08

10/1/2008 10:00 AM

Stipulation relating to bills of exchange

- Two cumulative preconditions:
 - part of the text of the bill of exchange
 - written in the language in which the whole document is written

Bill of exchange	
In Prague, January 1, 2005	
For this bill of exchange pay to the order of Franck Payee the sum of One hundred USD.	
Drawee:	
Karel Nowak Brno, Úvoz 1 602 00	
At: Brno, Úvoz 1, 602 00	
Jan Pleva Brno, Joštova 8 <i>(signature of the drawer)</i> Jan Pleva	

Payment order, drawee

- Unconditional payment order
- Name of the drawee

Bill of exchange	
In Prague, January 1, 2005	
For this bill of exchange pay to the order of Franck Payee the sum of One hundred USD.	
Drawee:	
Karel Nowak Brno, Úvoz 1 602 00	
At: Brno, Úvoz 1, 602 00	
Jan Pleva Brno, Joštova 8 <i>(signature of the drawer)</i> Jan Pleva	

Maturity

Maturity (Draft of Promissory Note payable)	Legal Regulation in Article I BECA	Model Clause
At sight	Section 34	“at sight”, “at presentation”, “after sight”, “on demand”
At a fixed period after sight	Section 35	“one month after sight”
At a fixed period after the date of drawing	Section 33	“pay in a month after drawing”
On a fixed day	Section 33	“on 4 th January 2005”