

Bill of Exchange Law

JOSEF KOTÁSEK

2005

1. Types of securities (commercial papers) in the Czech law

Share (Sec. 155 and the following of the Commercial Code) is a security to which is attached the right of the shareholder to participate in the company's management, its profits and liquidation surplus if the company is dissolved. Shares can be issued as a Bearer share (in Commercial Code terminology a "holder share") and as a registered (au nom) share (nevertheless, according to Sec. 3 of the Securities Act, even there applies provision on securities upon order). Under the Czech law, there are ordinary shares ("kmenové akcie") connected with no special rights, and preference shares ("prioritní akcie") incorporating preferential right to participate in profits and liquidation surplus.

Interim certificate (Sec. 176 and the following of the Commercial Code) is issued by the joint stock company before its entry into Commercial Register to the subscriber instead of all subscribed and not fully-paid shares of one class. Interim certificate thus replaces up to now not fully-paid shares. It is attached with rights arising from shares, which are replaced by such a certificate, and with the duty to pay their issue price. Should the owner transfer it to another person prior to payment of the issue price, he shall guarantee payment of the unpaid portion of the issue price. The provisions on registered shares apply to interim certificates. If an interim certificate replaces registered shares whose transferability is restricted, the transferability of such interim certificate shall be restricted to the same extent. An interim certificate may exist only as a certificated one ("listinná podoba") and may be transferred by the means of endorsement.

Similarly to an interim certificate, **share subscription certificate** (Sec. 204b of the Commercial Code) is a secondary security as well. It replaces shares and it is issued upon Bearer. It is attached with the rights of a share subscriber. It is issued before increase in registered equity capital upon decision of the general meeting after payment of the share issue price, but before entering the increase into Commercial Register (after entering the new shares can be issued). Regarding the fact the entering the increase of registered equity capital is a constitutive act, the holder may dispose with replacing security in the meantime, otherwise he would have to wait for entering into Commercial Register and issuing paid shares. One share subscription

certificate is attached with the rights arising from subscription of one share. Nevertheless, the general meeting may decide that one share subscription certificate is attached with the rights arising from subscription of more than one share.

Mutual funds certificate (Sec. 8 of the Mutual Investments Act) incorporates participation of a shareholder in assets of mutual fund. For the holder of the mutual funds certificate, the key aspect is, whether the pertinent mutual fund is open, or closed. Open mutual fund does not have restricted number of issued mutual funds certificates and the holder of the certificate has the right of redemption of his certificates by investment company. The redemption has to be carried out within 15 working days. The right of redemption does not arise to the holder of closed mutual funds certificate.

Bonds and their issuing are stipulated by the Act No. 190/2004 (Bonds Act). Some special kinds of bonds are stipulated by the Commercial Code as well. The substance of bonds is close to promissory note. Similarly to that, it incorporates the right of the holder to get payment of owed amount of money and duty of issuer (drawer) to satisfy this right as well.

But in details, there are differences between these securities. Firstly, the difference is in subject that may issue the pertinent security. While range of drawers of promissory note is not restricted, the bond issuer may only be a legal person¹ with certain “history”: at least 2-years existence and at least 2 audited and approved one following the second annual financial statement.

Other differences lay in state supervision over issuing bonds. Not regarding the fact, whether pertinent bonds will be quoted on public security market, they may be issued only after the Securities Commission approves pertinent issuing terms (there is an exemption for the State and the Czech National Bank). Simultaneously, the Commission carries out state supervision over observance of obligations stipulated by the Bonds Act. Other difference is, that relations between issuer and beneficiary, according to Sec. 7 par. 3 of Bonds Act, are in a subsidiary way governed by the

¹ Exceptionally the issuer may be a natural person – on condition that he is a bank (for other conditions see Sec. 3 par. 1 of Bonds Act and Bank Act).

Commercial Code, while as concerns promissory note, subsidiary act is the Civil Code. Limitation period of rights incorporated to the bonds is, compared to promissory note, relatively long and takes 10 years.

Coupon (Sec. 12 of the Securities Act) is issued to claim the right of dividend from share, interim certificate or yield upon bond or mutual funds certificate. It can be issued as certificated and paperless form as well. In case that the coupons were issued in certificated form, they are issued in the form of so called coupon sheet. It can contain talon giving the right to the holder to obtain a new coupon sheet. Coupon may be issued only upon Bearer. Its requirements ensure sufficient information for prospective holder who does not dispose with main security and obtains only coupon. According to the Sec. 12 par. 3 the coupon contains information about its type, yield or way of its determination, date and place for claiming the yield.

Investment vouchers were securities upon name bearing the right to acquire shares/mutual funds certificates within so called “coupon privatisation”. They have no importance any more.

Subscription warrant (Sec. 217a of the Commercial Code) is a security attached with pre-emptive right to subscribe shares which should be issued by the joint stock company to increase registered equity capital, or the right to get exchangeable or preferred bonds.

Bill of exchange/promissory note (Art. I and III BECA) is a certificated (“listinný”) security in which a drawer either promises to pay to a certain person certain financial sum (promissory note), or orders to a drawee to pay (bill of exchange). It can be issued upon order (preferably); on the basis of a special statement written by a drawer it can be issued upon name and is transferable by cession.

Cheque is stipulated by the second and third article of BECA. Its substance is closed to bill of exchange – the drawer orders to the third person, usually to a bank, with which the drawer has open account, to pay certain financial amount. Cheque may be

issued only as a certificated security and can be issued upon bearer, holder and upon name as well.

Travel cheque is stipulated by the Sec. 720 and the following of the Commercial Code. It gives to the stated person or to the Bearer the right to obtain certain financial sum upon its presentation for payment according to the terms determined by the cheque drawer. Provisions concerning bill of exchange, promissory note and cheque do not apply to travel cheques.

A **bill of lading** (“náložný list”) is stipulated by the Sec. 612 of the Commercial Code in connection with contract on the carriage of things. Under such a contract the carrier undertakes to carry a thing or things from a determined place to another determined place. According to the contract, the carrier may be obliged to issue a security for the consignor – bill of lading. The carrier is not obliged to issue a bill of lading unless agreed otherwise in the contract. Differently from agriculture warehouse certificates incorporating proprietary rights, with a bill of lading is attached “only” right to hand over the delivered thing. That is why the bill of lading pertains to the range of “goods securities”. It can be issued upon bearer, holder and upon name as well.

Similar regulation applies to **warehouse certificate** (“skladištní list”) (Sec. 528 of the Commercial Code) incorporating the right to ask for handing over of the stored thing. It can be issued upon Bearer, holder and upon name as well.

According to the rights incorporated in it, an **agricultural warehouse certificate** (Sec. 2 of the Act on Agricultural Warehouse Certificates) is a special kind of the securities. It performs proprietary and sometimes mortgage rights to the stored goods. By its transfer, not only right of handing over the goods, but also the proprietary right is transferred.

2. Securities Classification

a) Survey of Securities and Their Legal Regulation

Type of Security	Legal Regulation
Share	Sec. 155 and the following of the Commercial Code
Interim certificate	Sec. 176 of the Commercial Code
Share subscription certificate	Sec. 204b of the Commercial Code
Mutual funds certificate	Sec. 8 of the Mutual Investments Act
Bond	Act 190/2004 Coll. On Bonds
Investment Voucher	Act 92/1991 Coll. On Conditions of Transfer of the State Property to Other Persons
Voucher	Sec. 12 of the Securities Act
Subscription Warrant	Sec. 217a of the Commercial Code
Bill of exchange/ promissory note	Art. I and III of the Bill of Exchange Act
Cheque	Art. II and III of the Bill of Exchange Act
Travel Cheque	Sec. 720 of the Commercial Code
Bill of lading	Sec. 612 of the Commercial Code
Warehouse certificate	Sec. 528 of the Commercial Code
Agricultural warehouse certificate	Sec. 2 of the Agricultural Warehouse Certificates

b) Classification of the Securities According to the Form

Type of Security	Certificated Form	Paperless Form
Share	X	X
Interim certificate	X	
Share subscription certificate	X	X
Mutual funds certificate	X	X
Bond	X	X
Investment	X	



Voucher		
Voucher	X	X
Subscription Warrant	X	X
Bill of exchange/ promissory note	X	
Cheque	X	
Travel Cheque	X	
Bill of lading	X	
Warehouse certificate	X	
Agricultural warehouse certificate	X	

c) Classification of the Securities According to their transferability (Sec. 4 of the Securities Act)

Securities (commercial papers) can be issued as

- securities upon name (au nom)
- securities on order
- securities on Bearer (au porteur)

Hereinafter we refer to individual kinds of securities in certificated form. Symbol (X) is attached to securities declared as issued upon name but stipulated by the provision on securities issued on order (Sec. 3 of the Securities Act)

Type of Security	Sec. on Bearer	Sec. upon name	Sec. on order
Share	X	X 	(X)
Interim certificate			X
Share subscription certificate	X		
Mutual funds certificate	X	X	X
Bond	X	X 	(X)
Investment Voucher		X	
Voucher	X		
Subscription Warrant	X		

Bill of exchange/ promissory note		X	X
Cheque	X	X	X
Travel Cheque	X	X	
Bill of lading	X	X	X
Warehouse certificate	X	X	X
Agricultural warehouse certificate			X

3. Bills of Exchange – Economic Importance

Originally, the bill of exchange served for exchange of currencies and for a safe transport of financial means for longer distances. These, formerly main functions of bill of exchange, were in the course, taken over by other instruments. In the time of modern banking and in the time of prompt non-cash payments, the bill of exchange is used as a security instrument; in addition, it can also become a payment, credit and/or deposit means.

Regarding the relations, which create an economic basis of a bill of exchange, bill of exchange can usually play two roles – payment or security instrument. Decisive is an agreement of participants, bill of exchange as such is from this point of view abstract and its purpose is usually not noticeable.

As concerns payment using a bill of exchange, there are two variants possible: payment by a bill of exchange and payment by means of bill of exchange. If parties agree on **payment by a bill of exchange** (professional resources speak about a bill of exchange issued “pro soluto”), it actually concerns exchange of bill of exchange against performance of the contract. The obligation which creates the basis for a pertinent bill of exchange obligation (so called causal relation) extinguishes in the moment of transfer of the bill of exchange to a creditor. Other relations among affected parties have in principle bill character. Bill of exchange plays a similar role as money there. In practice, **payment by means of bill of exchange** (bill of exchange issued “pro solvendo”), which is stipulated by Sec. 334 of Commercial Code.

Payment by means of bill of exchange does not concern termination of duty arising from causal relation. But the payment of bill of exchange (also payment to the next indorsee, on whom the bill of exchange was in the meantime indorsed) at the same time terminates obligation implying from causal relation.

The most often is the bill of exchange used as a security. Security bill of exchange should be used by creditor only if claim arising from causal relation was not met properly and on time.

Functions of bills of exchange		
Security instrument	Payment instrument	
	Pro soluto	Pro solvendo

4. Types of Bills of Exchange According to the Czech Law

Bills of exchange can be sorted according to various criteria. Bill of exchange law distinguishes bill of exchange and promissory note. From the simplified point of view, promissory note is a certain variant of a credit paper. Its substance is a promise of a drawer to pay to a creditor (payee) certain financial sum. As a rule, a promissory note therefore contains characteristic expression “I will pay”. In its basic form it has only two participants – drawer and creditor (payee). The drawer of a promissory note is a direct debtor obliged by his sign to pay at the maturity.

This is not the case of a bill of exchange (draft). For a reader meeting the bill of exchange law for the first time it could seem that bill of exchange is a complication of a simple and clear scheme of a promissory note (which so clearly reflects relation debtor – creditor to a bill instrument). For a bill of exchange is usually used a term “trata”.

The bill of exchange is distinguished from the note above all by the fact that, in its basic form, it requires higher **number of participants**. Speaking about a basic bill of exchange, there are drawer and payee again, but this once relations between them are “complicated” by another participant – **drawee**. Substance of a bill of exchange is in payment order of a drawer to a drawee to pay certain financial sum to a payee. As a rule, a bill of exchange therefore contains characteristic expression “Pay to”.

On certain conditions, number of participants can be reduced, since drawer, drawee and creditor do not have to be 3 different persons. The BECA takes as valid two bills of exchange with reduced number of participants: a bill of exchange drawn on the drawer himself (Article I, Section 3 par. 1) and a bill of exchange payable to his order. The bill of exchange with only one participant is not valid.

Bill of exchange **drawn on the drawer himself** is a bill of exchange, where drawer declares himself as a creditor (by words “to my own order”). Drawer and payee is the same person in this case.

Bill of exchange **payable to drawer’s order** is a bill of exchange where the drawer orders to himself to pay to a payee. Drawer and drawee is the same person here. To get a direct debtor, the bill of exchange has to bearer an acceptance by the drawee.

In the following text we will not make a difference between a bill of exchange and a promissory note. Speaking about a bill of exchange, we mean promissory note as well, unless from the context arises something else. The Czech language has one expression for a bill of exchange as well as for promissory note: “směnka”. For a bill of exchange the expression “směnka cizí” is used, for a promissory note the expression “směnka vlastní” is used.

5. History of Legal Regulation of Bill of Exchange in the Czech Republic

Local particular sources, lex mercatoria
Bill of Exchange Patent from 22 December 1763

Imperial Patent No. 51/1850
Bill of Exchange and Cheque Act No. 1/1928, "BECA"
Government Regulation No. 111/1941 from 19 December 1940
Bill of Exchange Act No. 191/1950

6. Czech Bill of Exchange Law as a Part of Geneva Bill of Exchange System

In the end of the 19th century, the first efforts were made to come to an international unification of existing laws. These efforts resulted in a convention in Geneva in 1930.

The Geneva Convention was introduced and made law in the Czech regions in 1940 during German occupation. Even present BECA arises from the results of Geneva conference, which took part in 1930, exactly from one of the three conventions. The first and the most important is Convention on unified bill of exchange act stipulating technical issues as ratification. Decisive importance for material law regulations has the first appendix of this Convention. It contains Uniform Law on Bills of Exchange and Promissory Notes having in total 78 articles and stipulating bill of exchange and promissory note.

The second one is Convention for the settlement of certain conflicts of laws in connection with bills of exchange and promissory notes and Protocol. The third one deals with fees and has no bigger importance.

Former Czechoslovak Republic as one of participants of Geneva conference signed all the three conventions. Nevertheless, they have not been yet ratified; therefore they are not binding for Czech Republic. In spite of that, our legal regulation strictly arises from Geneva conventions and no doubt it falls within Geneva bill of exchange law.

7. System of the Act

Relevant legal regulation is embodied in BECA. The Act actually keeps its form till today (it was amended only once with no bigger importance, by the Act No. 29/2000 Coll.). As stated above the BECA arises from Geneva Convention.

In the Czech Republic, legal regulation of a bill of exchange and a cheque is consolidated in one act. It is therefore reflected in scheme of the act. BECA is divided into three separately numbered articles.

The first one (Article I, Section 1 - 98) regulates bills of exchange, the second one (Sec. 1-75) regulates cheques and the third one (Article I, Section 1 - 11) focuses on some common questions (active legal capacity, signatures of authorised persons and other declarations on deeds). From the point of view of bill of exchange law, the first and the third ones are important.

The first section is divided into four parts further divided into titles:

Part One: Bills of Exchange (Sec. 1 – 74)

Title one: Issue and Form of a Bill of Exchange (Sec. 1 – 10)

Title two: Endorsement (Sec. 11 – 20)

Title three: Acceptance (Sec. 21 – 29)

Title four: Aval (Sec. 30 – 32)

Title five: Maturity of bill of exchange (Sec. 33 – 37)

Title six: Payment (Sec. 38 – 42)

Title seven: Recourse of Non-Acceptance or Non-Payment (Sec. 43 – 54)

Title eight: Intervention for Honour (Sec. 55 – 63)

Title nine: Parts of a set and Copies (Sec. 64 – 68)

Title ten: Alterations (Sec. 69)

Title eleven: Limitation of Actions (Sec. 70 – 71)

Title twelve: General Provisions (Sec. 72 – 74)

Part two: Promissory Notes (Sec. 75 – 78)

Part three: Supplementary Provisions (Sec. 79 – 90)

Title one: Protest and Some Other Acts (Sec. 79 – 88)

Title two: Enrichment (Sec. 89)

Title three: Lost or Damaged Bills and Protest Deeds (Sec. 90)

Part four: Special Provisions of International Bill Law (Sec. 91 – 98)

On the first sight it could seem that minimum attention was paid to promissory note. Its legal regulation is ostensibly contained in only four sections, but Sec. 77 says that if it accords with the substance of a promissory note, provision on a bill of exchange applies. Legislator chose the way of legislative short and so most of questions concerning promissory note were governed by the reference to the bill of exchange.

8. Consumer Credit and Bill of Exchange

As stated above, consumer protection during payment and securing by bill of exchange is governed by Sec. 12 of the Act on Consumer Credits, which transposes to our legal order pertinent European directive. According to cited provision, if consumer pays the consumer credit by the means of a bill of exchange or cheque, or if the payment is secured by them, the creditor is obliged to act in such a way to keep all the rights of the consumer arising from the agreement on consumer credit.

9. Participants of the Bills of Exchange

No person is liable on an instrument unless his or her signatures appear on it. For participants of relations implying from a bill of exchange on debtor's side is essentially important whether they signed the bill of exchange in the position of direct or indirect (regress) debtor. Direct debtor is the one against whom it is possible to claim directly and without so called preserving (maintaining) acts (presentation and protest). Putting forward the claim is in fact not bound with other presumptions than due presentation of a bill of exchange.

On the other side, regress debtor is a debtor of the "second class". He plays a role of a certain security against which is usually proceeded only in case when requested procedure is not kept. As a rule, it concerns cases when bill of exchange was not accepted, or although it was accepted, at the maturity it was not paid. Therefore rights against regress debtors can be exercised within so called protest only after

executing certain maintaining acts (typically presentation of the bill of exchange for acceptance or payment and execution of a protest for non-acceptance or non-payment, unless the holder was from this duty liberated in special cases).

Drawer (maker)

The Czech law does not terminology make a difference between a drawer of a promissory note (maker) and drawer of a bill of exchange (drawer *stricto sensu*). Hereinafter we will refer to “maker” in general. As concerns maker of a bill of exchange, we will speak about “drawer”. Maker as an author of promise or order to pay is a key person of bill relations. Without his/her signature the bill is not valid. Maker is a bill debtor; key question for his position in hierarchy of bill debtors is whether he drew a bill of exchange or a promissory note. It is essential to distinguish both two makers; the difference lays particularly in content of laws, which a creditor holds against them.

As stated above, maker of a promissory note obliges himself to pay at the maturity. He/she is thus direct debtor. He can release him from liability for payment or make his/her liability bounded with any condition, if the paper should be valid.

Unlike maker, drawer of a bill of exchange (trasant) is in a position of indirect, regress debtor – see Article I, Section 9 BECA which stipulates that drawer is recoured not before the bill of exchange was not accepted or paid. Drawer can release himself from guaranteeing acceptance with special stipulation “without recourse for acceptance”. Every stipulation by which he releases himself from the guarantee of payment is deemed not to be written. If drawer (trasant), within the recourse, will pay, he can in principle acquire rights only against prospective acceptor and his aval.

Payee

The First bill creditor, a person, in whose favour the bill is issued, is in Czech designated as “remitent”. The payee is the person named on the face of the bill of exchange or a promissory note to receive payment. Payee is the first beneficiary from

a bill. Usually he is named in words “Pay to the order of Robert Altman”; the named person, Robert Altman, is the payee. The drawer and the payee in case of bills of exchange drawn “to the order” may be the same person (Article I, Section 3, paragraph 1 of BECA).

Drawee

Drawee, in Czech “směnečník” or “trasát”, is an addressee of payment promise of the drawer. For the moment he/she is not obliged, but absolutely necessary participant – statement of his/her name is one of requirements of a bill of exchange. He becomes 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.

Acceptor

Drawee is obliged only by the written acceptance of a drawer’s order. In present Czech law practice, on the spot acceptance of the bill prevails. From the payee’s point of view, such an acceptance is comfortable: before passing on the bill to the creditor (remittent), the drawer ensures acceptance by the drawee and accepted bill is passed on to the creditor. The bill can be accepted only by the person stated as a drawee. Acceptor is then – similarly to maker of a promissory note – obliged in a position of direct bill debtor (Article I Section 28 paragraph 1 BECA). If he pays the bill, he/she has no other option to recourse further bill debtors.

Persons giving an aval guarantee

BECA in its Article I, Section 30 – 32 stipulates a special guarantee for payment of a bill – so called “aval”. The giver of an aval (in Czech “aval”, “avalista”) is usually a person not obliged yet. This 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. The person, for whom the guarantee is given, is in Czech named “avalát”.

Parties of endorsement: Indorser and Indorsee

In most case, the bill, even if not expressly drawn to order, may be transferred by the means of endorsement. Endorser (formerly in Czech “rubopisec”, “žirant”) by the means of endorsement endorses rights arising from the bill to the endorsee (formerly in Czech “rubopisník”, “žiratář”). The first endorser is the payee.

Endorser is an indirect (regress) debtor. According to Article I, Section 15 paragraph 1 of BECA, he guarantees payment of the bill unless he/she released himself from the guarantee by a special stipulation.

Domicile

A bill of exchange may be payable at the domicile of a third person either in the locality where the drawee has his domicile or in another locality (Article I, Section 4 BECA). The person stated as a domicile is neither bounded nor beneficiary, he is only a mediator through whom the bill should be paid. Usually the role of the domicile plays a bank.

10. Form of bill of exchange and promissory note

The bill of exchange or promissory note must be in writing. There is no such thing as an oral bill or note. Writing includes handwriting, typing or printing. The bill can not be entered in a book like shares or bonds. Actually, it can be written on whatever substratum which is capable in a relatively stable form to keep the text and to enable to distinguish reverse and averse side and to join the alonge as well. It is not therefore possible to write a bill on a rock, sand etc. Usually, paper serves as the substratum. In older decisions, there are sometimes mentioned some strange substances; very often cited is the one mentioning a bill written on a cover of cigar box. In today’s decisions, we can find for instance bills written on counterfoil or table-napkin.

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.

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. Text of the paper is usually a result of filling in and signing of blank forms.

Example of the Czech form of a bill of exchange:

Podpis příjemce	dne	20	Kč	hal
	<small>Místo a datum vystavení (měsíc slovy)</small>			
	Za tuto směňku zaplatíte dne		20	
	<small>Měsíc slovy</small>			
	na řád:			
	<small>komu</small>			
	Kč	<small>Cástka slovy</small>		hal
	Směnečník:			
	Splatno v:	<small>Místo placení</small>		
	u:	<small>Domíli</small>		
		<small>Jméno, adresa a podpis výstavce</small>		

Example of the czech form of a promissory note:

(dodá autor!)

11. Principle of Independence of Bill Statements

If a bill bears signatures of persons for any reason cannot bind the person who signed the bill or on whose behalf it was signed, the obligations of the other persons who have signed the bill are non the less valid. (Article I, Section 7 BECA). Cited provision expresses one of the key principles of the bill law – principle of independence of bill statements. Effects of a particular signature thus do not depend

on the fact whether a statement of particular debtor is binding, or not, resp. whether even undersigned presumed debtor exists.

The act states examples of non-binding signatures only in a demonstrative way; it concerns for example wrong signatures, signatures of fictitious persons or signatures of persons for any reason incapable of binding. It does not exclude a case when pertinent statement would be invalid for reasons stipulated in general provisions (in particular Sec. 37 par. 1 of the Civil Code which considers legal act as invalid on condition that it was not undertaken in a free or serious way).

As concerns obligations of other debtors, it is not essential if any other participant did not for any reason become a debtor. For instance, even if there is as a drawer stated a person who is not capable of binding himself/herself, as an acceptor a fictitious person and his/her aval did not use his/her true name, but a pseudonym, the paper still can be – on condition that it complies with regulations on requirements of bills – binding for other debtor or debtors (endorsers).

12. Agency

A signature on the bill of exchange or promissory note may be made by an agent. An agent signing the bill or a note should disclose on the paper the identity of the principal and the facts that the signing is made in a representative capacity (at least by signing it). When both are done an agent is not liable on the paper. Whosoever puts his signature on a bill of exchange as representing a person for whom he had no power to act is bound himself as a party to the bill of exchange and, if he pays, has the same rights as the person for whom he purported to act. The same rule applies to a representative who has exceeded his powers of agency.

13. Ways of Transfer of Bill of Exchange and Promissory Note

According to the way of transfer, bill of exchange can be drawn only upon order or upon name. Due to the Czech bill of exchange law, bill of exchange drawn to a holder is not allowed since the name of the first payee is a requirement of bill. It

distinguishes a bill from cheque (see Article III, Section 5 paragraph 1, letter c) BECA.).

Unless a bill contains other stipulation, it concerns a bill of exchange drawn upon order primarily transferred by endorsements. Differently from some other securities, it is not necessary to write a statement, that a bill is drawn “to order”. Even without such a stipulation, the bill is transferable by endorsements (comp. Article I, Section 11, paragraph 1 BECA). The bill is rightly declared as “legal order-instrument”. The bill drawn “au nom” is not very usual. The bill may become an au nom instrument by a special stipulation given by a drawer. The Act stipulates its possible wording “not to order”. Bills with such a stipulation are transferable by a assignment according to the Civil Code.

14. Blank Instrument

Blank instrument is mentioned only marginally in the only provision (Article I, Section 10 BECA). It stipulates that if a bill of exchange/promissory note which was incomplete when issued has been completed otherwise than in accordance with the agreements entered into, the non-observance of such agreements may not be set up against the holder unless he has acquired the bill of exchange/promissory note in bad faith, or, in acquiring it, has been guilty of gross negligence.

The following characteristics of blank instrument may be inferred from this provision: Blank instrument is a paper signed by a debtor. The paper is determinated as a bill, parties have to consider it as pre-stage of future bill. Incompleteness of the paper is intentional, it means that according to the intention of parties, it lacks certain legal formality and it is joined with bill completion right agreed before. At the same time of transfer, the drawer of blank instrument enters into agreement on bill completion right with assignee. The written form of such an agreement is not obligatory; it can thus be concluded orally. Agreement on bill completion right often makes a part of pertinent contract (credit, leasing, or purchase).

Blank instrument can be thus defined as a paper determinated as a bill and its signator intentionally issued it as an incomplete one on condition that the bill

completion right was agreed. The bill completion right agreement usually concerns bill sum and date of maturity.

15. Changes in Text of Bill of Exchange/Promissory Note

It is necessary to strictly distinct completing blank instruments accompanied by a bill completion right agreement (even though it was not kept), and changes in the text of paper which should have been issued as a completed one and which is not accompanied by any similar agreement. There can be three variants:

a) Change of invalid paper into valid one

There is a principle that bill obligations can not arise from an invalid paper. Any such a change of the text (for instance completion of missing requirement) is not relevant. Nevertheless, burden proof lays on an asserting person.

b) Changes of text of valid paper (even after changes, the paper stays formally valid bill)

This kind of changes stipulates Article I, Sec. 69 BECA. It fully respects principle of independence of individual bill statements: If text of the bill was changed, persons signing the bill after such a change are liable according to the text changed; those who signed it before, they are liable according to the original text. Each debtor is thus liable according to the text which he has signed. Change of the text is not effective against those who signed it before.

c) Changes leading to invalidity of the paper

Article I, Sec. 69 BECA stipulates only such a change of the bill text after which the paper stays a valid bill. It does not deal with changes leading to the invalidity of the bill (for instance tearing off any requirement); in this case the bill has to be redeemed.

16. Requirements of Promissory Note

Requirements of a promissory note are regulated in Article I, Section 75 BECA. A promissory note contains: 1. The term “promissory note” inserted in the body of the instrument and expressed in the language employed in drawing up the instrument (a clause); 2. An unconditional promise to pay a determinate sum of money; 3. A statement of the time of payment; 4. A statement of the place where payment is to be made; 5. The name of the person to whom or to whose order payment is to be made; 6. A statement of the date and of the place where the promissory note is issued; 7. The signature of the maker.

As requirements for the clause, the time of payment, the name of the payee and the signature of the drawer are regulated in the same way like the bill of exchange, for more information see further text.

An instrument in which any of the requirements mentioned above are wanting is invalid as a promissory note except in the cases specified in the following paragraphs. A promissory note in which the time of payment is not specified is deemed to be payable at sight. In default of special mention, the place where the instrument is made is deemed to be the place of the domicile of the maker. A promissory note which does not mention the place of its issue is deemed to have been made in the place mentioned beside the name of the maker.

Examples of a promissory note:

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 payable at sight, drawn to the order of Jan Král

	Brno, 1 January 2005 I will pay for this promissory note 1,- CZK Not to order of Jan Novák, Joštova 8, Brno <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 5px auto;">One Czech crown</div> <div style="text-align: right; margin-top: 10px;">without protest</div> Payable in Brno Josef Nový, Brno (signature)
--	--

Promissory note issued upon name (“not to order”), with negative protest stipulation, payable at sight.

17. Requirements of Bills of Exchange

Requirements of bills of exchange are regulated by eight paragraphs of Article I, Section 1, BECA. The following elements can never be omitted: the term “bill of exchange” inserted in the text of the instrument (Article I, Section 1, Paragraph 1), an unconditional order to pay a certain sum of money (Article I, Section 1, Paragraph 2), the name of the person who is to pay (Article I, Section 1, Paragraph 3), the name of the person to whom or to whose order payment is to be made (Article I, Section 1, Paragraph 6), the date of the drawing of the bill of exchange (Article I, Section 1, Paragraph 7) and the signature of the drawer (Article I, Section 1, Paragraph 8). On the other hand, maturity need not be stated at all in the bill of exchange (Article I, Section 1, Paragraph 4). The place of payment (Article I, Section 1, Paragraph 5) and the place of the drawing of the bill of exchange (Article I, Section 1, Paragraph 7) need not result from the bill directly but they may be indirectly deduced from other pieces of information in the bill.

Notes on individual essential elements of the bill of exchange following the order of Article I, Paragraph 1, BECA:

a) Stipulation relating to bills of exchange

A bill of exchange must primarily include a designation that it is a bill of exchange, the so-called stipulation relating to bills of exchange. The stipulation must meet two cumulative preconditions: first, it must be part of the text of the bill of exchange. Therefore it is not enough to insert the term of “bill of exchange” only in the heading or as a decorative printed form on the margin of the form or in watermark. It is always necessary for the designation to be inserted directly in the text of the bill.

The second precondition is that the designation of bill of exchange must be written in the language in which the whole document is written. The bill should be drawn only in one language. The bill may be written in any of the existing languages and the participants are not restricted in any way as far as this is concerned. It does not matter who has drawn the bill and where it has been drawn, or when the bill is payable.

b) Unconditional payment order

The essence of the bill of exchange is a payment order of the drawer addressed to the drawee. The use of a certain form for this order is not prescribed but it must be clear from the text of the bill. In practice, we usually come across the mere imperative “Pay”.

Pursuant to Article I, Section 1, Paragraph 2, BECA, this order must be unconditional and must be expressed in a certain sum of money. The amount requirement is important to the negotiability of draft and notes because they usually are sold at a discount, or less than face value.

The money relating to bills of exchange must be expressed in words or figures, or in both ways (it is actually required by all bill forms for security reasons). If the sum of money relating to bills of exchange is expressed differently in figures and words (for example, 100,000 and “one hundred and ten thousand”) the bill of exchange is not invalid for the reason of contradicting pieces of information. In such cases the law reasonably states that if there are divergent data concerning the sum, it is the one expressed in words that holds. In case of the sum of money expressed several times in words or several times in figures, it is the sum that is the lowest one that holds and in no case the amounts may be added up.

The certainty of the sum of money relating to bills of exchange is also required by the statement of currency. It is not possible to pay interest on the sum of money

relating to bills of exchange except for sight bills. When a bill of exchange is payable at sight, or at a fixed period after sight, the drawer may stipulate the sum payable shall bear interest. In the case of any other bill of exchange, this stipulation is deemed not to be written. The rate of interest must be specified in the bill of exchange; in default of such specification, the stipulation shall be deemed no to be written. Interest runs from the date of the bill of exchange, unless some other date is specified.

c) Name of the drawee

As already mentioned above, the drawee is a mere addressee of the payment order of the drawer. An obligation arises for him only by his acceptance (comp. Article I, Sections 21 – 29, BECA). The drawer may designate himself as the drawee (the so-called disguised bill of exchange). It is quite enough to state the name (designation, trade name) of the drawer. Other complementary data (birth identification number, residence, company registration number, seat, etc.) are only desirable from the practical point of view but the law does not require them for validity of the bill of exchange.

d) Indication of maturity

Maturity need not be indicated in the bill of exchange as such a bill is payable at sight pursuant to Article I, Section 2, BECA.

Pursuant to Article I, Section 33, Paragraph 1, the bill of exchange may be payable at sight, at a fixed period after sight, at a fixed period after the date of drawing and on a fixed day. Bills of exchange with another type of maturity are invalid. Bills of exchange payable by instalments are also null and void.

Bills of exchange payable at sight (sight drafts)

Maturity at sight is formally based on expressly using words “at sight”, “at presentation”, “after sight”, etc. Another option consists in not stating the day of maturity as mentioned above. With bills of exchange at sight the due day is not

determined clearly in advance. The due day is the day when the bill of exchange is presented to the respective person for payment.

Bills of exchange payable at a fixed period after sight (time drafts)

An example of time draft is a bill of exchange which is due “one month after sight”. The time stated in the bill runs from the day of acceptance of the bill or the protest. Therefore acceptance must bear a date. If the bill was not accepted, or the date of acceptance was not stated the bill must be protested.

Bills of exchange payable at a fixed period after the date of drawing (time drafts)

These are bills in which maturity is stated at a fixed period after the day of drawing, for example, “pay in a month after drawing”.

Bills of exchange payable on a fixed day (fixed time drafts)

It is the usual determination of maturity date, for example, “on 21st August 2001”.

Maturity of the bill of exchange may only be determined by the four methods mentioned above. Bills of exchange with a different maturity date are inadmissible. Now a few notes on various cases of invalid bills of exchange because of a defective determination of their maturity. The law expressly declares as invalid bills of exchange with successive maturity (installment bills of exchange).

The maturity date must be existing, otherwise the bill is invalid (for example, “on 31st November 2001). A year must be unconditionally stated. Also, there must be only one maturity date clear from the bill. Therefore it is inadmissible to state the maturity date so that it will be more days, for example, “pay in August 2005”, as such a bill would have 31 days of maturity in total. Also, bills of exchange with maturity “until 22nd August 2005” or “during ten days since the day of drawing” will be invalid. These data are defective because of the prepositions “until” and “during” as it is not clear on which concrete day from the remaining time such a bill would be mature. Inadmissible are also alternative determinations of maturity (“pay on 2/7/2001 or

5/11/2001”, pay at sight or in two weeks after sight”) and also bills of exchange in which the maturity is determined not only by a concrete day but also by an hour (“pay on 4th January 2005 at 13.00”).

Table: Indication of 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

e) Place of payment

The place of payment may be stated in the bill of exchange in two manners. Firstly, the drawer may determine it expressly. However, if the drawer omits to state the place in the bill it does not follow that the bill is invalid. In such a case the legal place of payment pursuant to Article I, Section 2, Paragraph 3, BECA, is the place stated with the name of the drawer. This second possibility of determining the place of payment presupposes, of course, that there is a certain place stated with his name (and not more different places). Otherwise, it is an invalid bill of exchange.

The place of payment may be stated in the bill also through the domicile, for example, “Payable at the Deutsche Bank, Brno branch”.

f) Designation of the payee

As mentioned above, the bill of exchange cannot be issued as a security on bearer. The bill must always include the name of its first acquirer (payee).

The drawer and the payee may be identical (draft to one's own order).

g) Day and place of drawing

The bill of exchange must include the day and the place of drawing. As for the day of drawing, the same rules as mentioned about the maturity date apply, especially the rule that the day must be existing and must be clear enough (day, month, year). The date of drawing must always precede the date of payment. If the place of drawing is not stated in the bill, it is considered to be drawn in the place stated with the name of the drawer (comp. Article I, Section 2, Paragraph 4, BECA). If no certain place is stated there, the bill is invalid.

h) Signature of the drawer

The last essential element of bill of exchange stated by the law is the signature of the drawer. It is the only element of bill of exchange stated in Article I, Section 1, BECA, for which it holds that the signature of the drawer must be made in one's own hand.

Examples of bills of exchange:

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 100 USD.	
Drawee: Karel Nowak Brno, Úvoz 1 602 00	
At: Brno, Úvoz 1, 602 00	
Jan Pleva Brno, Joštova 8 Signature of the drawer <i>Jan Pleva</i>	

Bill of exchange, not accepted, payable on a fixed day (fixed time draft)

<i>Jana Nováková (signature)</i>	Brno, 1 January 2005	
	31 January 2005 pay for this bill of exchange 500,- ----	
	CZK not to order of Jan Novák, Joštova 8, Brno	
	Five hundred Czech crowns	
	Jana Nováková, Stará 8, Brno	without protest Petr Slabý, Brno (<i>signature</i>)

Bill of exchange upon name, accepted, with negative protest stipulation, payable at fixed date.

18. Acceptance of the bill of exchange

By the bill of exchange the drawer orders the drawee to pay a certain sum of money to the payee. Until the drawee identifies with the text of the bill (by acceptance) he is still only a potential debtor. The situation changes only by acceptance (Article I, Section 21 – 29, BECA) which makes the drawee a direct debtor from the bill of exchange who has a duty to pay at maturity (comp. Article I, Section 28, Paragraph 1, BECA). It is logical that acceptance concerns only the bill of exchange and not the promissory note.

By acceptance the drawee becomes a receiver (acceptor) who is a direct debtor from the bill of exchange. The acceptor has a duty to pay for the bill at maturity and if he does not do so after the bill is presented, the owner (even if the drawer himself) can recover from the receiver all that can be claimed pursuant to Article I, Sections 48 and 49, BECA. The exercise of the right against the acceptor as the direct debtor is not conditioned by protesting the bill for non-payment.

If the acceptor, as the direct debtor, properly pays for the bill of exchange all rights arising from the bill are cancelled and the paying acceptor does not have a recourse relating to the bill against the drawer. There may only be general legal claims arising from his own relationships with the drawer and these cannot be put forward through a bill of exchange. If the drawee wanted to preserve recourse

against the drawer he should not accept the bill and rather make use of intervention – the so-called acceptance for honor (Article I, Section 55, Paragraph 3, BECA).

An acceptance is written on the bill of exchange. It is expressed by the word “accepted” or any other equivalent term; it is signed by the drawee. The simple signature of drawee on the face of the bill is deemed to be an acceptance. An acceptance is unconditional, but the drawee may restrict it to part of the sum payable. Every other modification introduced by an acceptance into the tenor of the bill of exchange operates as a refusal to accept. Nevertheless, the acceptor is bound according to the terms of his acceptance.

19. Aval

Payment of a bill of exchange may be guaranteed by an aval as to the whole or part of its amount. This guarantee may be given by a third person or even by a person who has signed as a party to the bill. The giver of an aval (avalist) is usually a person who is not bound by any bill of exchange yet. However, the law does not prevent a person who has already signed a bill from providing this kind of surety. The person for whom the avalist has committed oneself is called the debtor under aval. If the debtor under aval is not specified in the aval then it holds that it is the drawer. Therefore the obligation of the debtor under aval must be clear from the bill at least formally. The formal principle holds that without the debtor under aval there is no giver of an aval.

The giver of an aval may be guarantor for several persons and several persons may also be guarantors for one debtor. Of course, no guarantee may be assumed for someone who is not bound by a bill of exchange (for example, the drawee who has not accepted the bill of exchange, or the endorsee in case of the endorsement with exemption of liability).

The basic precondition for the avalist’s obligation to arise is a formally valid bill of exchange and the written form of the aval in the first place. As for the placement of the aval, Article I, Section 31, Paragraph 1, BECA, states that it should be either in the bill itself or in an allonge. The exact placement is not prescribed by the law so the giver of aval may be signed on the face or on the reverse of the bill. However, if he signs on the reverse of the bill, his mere signature is not sufficient (on this see hereinafter). Besides, the law allows for a copy to be provided with an aval in the

same way and with the same effects as the original. Usually, the aval is placed on the face of the bill. Some Czech forms of bills of exchange even bears respective boxes on their faces.

As for the time of giving an aval the law does not prescribe anything for bills of exchange. It is then possible to give an aval for an empty bill of exchange as well as for a bill of exchange after its maturity. Stating a date of the aval is not necessary.

According to the scope of aval, we distinguish a complete, a reduced and a minimal aval:

a) An example of the complete aval in a bill of exchange:

As a guarantee for Karel Černý
Jan Bílý (signature)

First, an allonge states the guarantee. BECA demonstratively prescribes its wording: “as a guarantee”. Other types of the allonge of the same meaning are permitted too, such as “per aval”, “as the avalist”, etc.

The second essential element is the information about the debtor under aval, i.e. the person who is guaranteed. Unlike the other participants the law does not insist on expressly stating his name. An indirect designation of the debtor suffices for his identification if there are no doubts who he is (for example, “Per aval for the acceptant”).

The whole statement of the giver of the aval is completed with his signature. What was mentioned above about signatures of the bill participants applies for his signature, too; there is a possibility of representation of aval, of course.

b) The reduced aval is characterized by lack of information about the debtor under aval. The statement of aval on the bill of exchange consists then only of a signed allonge about aval:

Per aval
Jan Bílý (signature)

c) There is a completely reduced form of aval constituted by a mere signature on the face of the bill of exchange. Pursuant to Article I, Section 31, Paragraph 3, BECA, it holds that this form establishes an aval (it is the so-called bare aval). However, the necessary precondition is that it is not a mere signature of the drawer (this is only a signature of the drawer) or the drawee (whose signature constitutes an acceptance). Further, the signature must be on the face of the bill of exchange; if it appeared on the reverse of the bill, in an appendix or in a copy, it could be taken for blanket endorsement (comp. Article I, Section 13, Paragraph 2, BECA).

In the reduced and minimal variants the debtor under aval is not expressly stated. In default of this piece of information, the aval is deemed to be given for the drawer (comp. Article I, Section 31, Paragraph 4, BECA).

The position of the debtor under aval is determined in the first place by the content of his own statement. The aval need not cover the whole sum of money as the giver of the aval may limit his obligation to a certain sum. The guarantee may also relieve, with effects against him, the creditor of the protest duty² and state his own supporting address.

However, he cannot change the obligation from the bill in a manner which would be in conflict with the essence of obligations arising from bills of exchange. Therefore a conditional guarantee (majority opinion) is inadmissible.

The position of the giver of aval is governed by the formal position of the debtor under aval: the giver of aval is bound as the person for whom he has become guarantor (Article I, Section 32, Paragraph 1, BECA). What matters is whether a direct or an indirect debtor is guaranteed. The guarantor for the acceptant is bound as the direct debtor and no preserving acts are need against him (presenting the bill of exchange, protesting). The guarantor for an indirect debtor is then bound in the same way as the latter, i.e. collaterally, and the owner has to do preserving acts. For example, if the endorsee restricted his liability for payment, it has the same consequences for his guarantor. The same applies analogically for limitation periods.

The accessory nature of the guarantor's obligation (his principal connection with the existence and validity of the debtor's obligation) is only formal. It follows from Article I, Section 32, Paragraph 2, BECA, that if there is a formal defect in the signature of the debtor the guarantor is not bound. Therefore if the obligation of the

²Comp. Article I, Section 46, Paragraphs 1 and 3, BECA.

debtor is invalid for a defective form there arises no obligation for the guarantor, either. An example of such formal defects is a signature made by means of facsimile. Other defects in the signature of the debtor that cannot be designated as formal (for example, forcing the signature by violence, the falsified signature, the signature of a person lacking legal capacity or the signature of a non-existing person) cannot effect the arising of the debtor's obligation even if the obligation of the person for whom the giver of aval has become guarantor did not arise at all.

From this follows a conclusion for the position of the guarantor in lodging objections for one's own relationships. The guarantor may lodge only those objections following from his own relationships towards the owner of the bill of exchange and not those following from the relationships of the debtor towards the possessor of the bill. Even if the giver of aval may stipulate the lodging of these objections in a contract with the creditor of the bill, such an agreement only binds the respective creditor and in principle does not affect another assignee of the bill, with the exception of unfair acquisition pursuant to Article I, Section 17, BECA, or acquisition by endorsement with the effect of assignment³.

If the giver of aval has paid for the bill of exchange he acquires rights against the person for whom he has become guarantor and against all those who are bound by the bill of exchange towards this person. If his debtor had more givers of aval, these are out of his reach. The content of rights of the giver of aval is determined by Article I, Section 49, BECA. The giver of aval has certain rights even before paying for the bill of exchange, for example, pursuant to Article I, Section 45, Paragraph 2, BECA, he should be informed about non-acceptance of or non-payment for the bill.

20. Types of transfer of bills of exchange

Table: Types of Transfer of Bills of Exchange

Type of Transfer
Endorsement
Assignment
Blanket tradition

³ Comp. Article I, Section 20, BECA.

Possession of securities may be generally transferred in three ways: by endorsement, by a written contract (assignment of a debt) or merely by passing over on the basis of an informal agreement. Some securities may be transferred, depending on the circumstances, by all these methods, with some of them there is not such a choice. For example, an interim security, as a security to order, is only transferable by endorsement.

The bill of exchange is among those securities that are transferable by all three methods mentioned above. The principal method, and usual one, is endorsement. In this way a bill of exchange may be transferred even if it does not include the clause “to order”. The other two ways of transfer – by assignment of a debt and by merely passing the rights over – are possible only when all preconditions set by the law are met.

The bill of exchange is transferred by assignment of a debt only if it includes a clause about prohibition of endorsement – the so-called restrictive clause (see Article I, Section 11 BECA). We usually find it in the wording “not to order” before the name of the creditor. Bills of exchange with such a clause of the drawer are called restrictive bills of exchange.

The situation is more complicated when the bill of exchange is only passed over. This is the most informal and fastest way of transfer of rights relating to bills of exchange called also “blanket tradition” (see Article I, Section 14, and Paragraph 2, Letter c/ BECA). Blanket tradition is admissible with bills of exchange where the line of endorsements is completed with a blanket endorsement. The possessor may then decide to pass the bill over to another person without writing anything on it. Ordinary or restrictive bills of exchange cannot be transferred in this way as they have the form of security on Bearer.

a) Endorsements

Every bill of exchange, even if not expressly drawn to order, may be transferred by the endorsement. The participants of endorsement are endorser and endorsee. By endorsement the endorser transfers the bill of exchange to the endorsee (provided that other legal preconditions are met). The first endorser is the payee and the second one is always the endorsee from the previous endorsement.

From the formal point of view the endorsement is based on a written statement of the transferor (the endorser). The endorsement may be inserted in the bill, in an appendix (Article I, Section 13, Paragraph 1, and BECA) or in a copy (Article I, Section 67, Paragraph 3, and BECA).

The endorsement must always aim at a transfer of all rights relating to the bill of exchange and partial endorsements are invalid (Article I, Section 12, Paragraph 2, BECA). There is a different situation with the conditional endorsement: a possible condition is seen as unwritten pursuant to quite a hard provision of Article I, Section 12, Paragraph 1, BECA, and it cannot be taken into consideration.

A typical endorsement includes a clause of transfer (“After me to order”), the information about the endorsee, (i.e. the information about the person to whom the bill is transferred) and the signature of the endorser. The endorsement may also have the form of a blanket endorsement. Whereas the completed endorsement expressly states the endorser we basically do not find his identification in blanket endorsements. The blanket endorsement consists either in the mere transfer clause and the signature of the endorser (“After me to order...” + the endorser’s signature) or it may even be reduced to the mere signature of the endorser on the reverse of the bill of exchange.

Table: Effects of endorsements

Effects of endorsements	Regulation in Article I, BECA
Transferring (with exclusion of debtors’ objections)	Section 14 Paragraph 1 and Section 17
Legitimizing	Section 16
Guaranteeing	Section 15

Table: Special Types of Endorsements

Type of Endorsement	Legal Regulation	Wording of the Special Stipulation	Effects
Exonerating (non-binding)	Art. I, Sec. 15, par. 1 BECA	“without obligation”, “sine obligor”, “without binding effect”, “without guarantee”, “without recourse”	transferring and legitimizing effects, no guarantee effects; the endorser does not become an indirect debtor and is not liable for acceptance of and payment for the bill of exchange
Direct (transfer prohibition)	Art. I, Sec. 15, par. 2 BECA	“not to order”	transferring and legitimizing effects, restricted guarantee effect: the endorser of the direct endorsement is liable for payment and acceptance of the bill of exchange only in relation to the person to whom he transferred the bill (his endorsee) and not in relation to possible other endorsees of the bill or note
Mandating	Art. I, Sec. 18 BECA	“value in collection”, “for collection”, “by procreation”	special options for representation; it does not have guaranteeing or transporting effects, only legitimizing ones
Securing	Art. I, Sec. 19 BECA	“to securing”, “value for securing”, “value in pledge”	Securing endorsements has legitimizing effects, not the guaranteeing ones (majority opinion); serving for the arising of security pledge
Sub-	Art. I, Sec. 20	None, time of	the acquirer acquires the right only

endorsement	BECA	endorsing is decisive	derivatively from the previous possessor and is exposed to all objections lodged by the debtor against the endorser (Section 526 Civil Code)
-------------	------	-----------------------	--

Model of common Endorsement

For me to order of Paul Newman Garry Oldman, Brno <i>signature</i>	
---	--

Model of Exonerating Endorsement

For me to order of Paul Newman Without recourse Garry Oldman, Brno <i>signature</i>	
---	--

b) Blanket tradition

It is not possible to transfer any bill of exchange by the blanket tradition. A necessary precondition is an endorsement in blank which does not contain the name of the endorsee. There are three options for the holder in this situation: the holder may fill in the endorsement either with his own name or with the name of some other person, or re-endorse the bill, or transfer the bill to a third person without filling in the blank endorsement and without endorsing it (Article I, Section 14, Paragraph 2, BECA). It is the third option that is designated as blanket tradition. In such a situation the bill

behaves in fact as a security to Bearer without actually being it because the blanket endorsement may be filled in anytime and the bill may be re-endorsed.

The blanket tradition has transferring and legitimizing effects as the endorsement (Article I, Section 16, Paragraph 1, BECA) but, quite understandably, it completely lacks guaranteeing effects (the transferor is not signed in the bill).

c) Transfer of bill rights by assignment

Pursuant to Article I, Section 11, Paragraph 2, BECA, the drawer may exclude endorsement by the so-called restrictive clause and the bill is then transferable by assignment. The law demonstratively states the wording: “not to order”. In practice, we usually find it under the designation of the creditor in bill (“Pay not to order to Mr. Jan Černý”).

By the restrictive clause the bill of exchange turns into a security on Bearer. Another transfer is then possible only in the form and with the effects of assignment (Sections 524 – 530, Civil Code). For the contract of assignment to be valid a written form is required by the law (Section 524, Paragraph 1, Civil Code).

21. Payment for the bill of exchange

The bill of exchange is a circulating security which may be transferred many times until its maturity (and with a certain limitation even after maturity). The debtor may usually only guess who will present him the bill at the time of its maturity. Neither the original assignee nor the new ones have the duty to notify him about transfers. The debt from the bill is therefore constructed in such a way that the right to payment is exercised by the possessor by presenting the bill for payment to the direct debtor.

The possessor has the right to payment against direct debtors in the first place. It is either the acceptant (Article I, Section 28, Paragraph 1, BECA) or the drawer (Article I, Section 78, Paragraph 1, BECA). Presenting the bill for payment to these persons within prescribed periods is not only a right but in a sense a very important duty of the possessor the failure of which is sanctioned by the law in a relatively harsh manner.

In literature, the presenting of the bill for payment is rightly called a preserving act because if the bill were not duly presented at maturity for payment, the obligations

of all indirect debtors from the bill would extinguish pursuant to Article I, Section 53, BECA.

However, from the practical point of view missing the presentment is not as fatal for the possessor as it might seem. The above mentioned statement is weakened by Article I, Section 46, Paragraph 2, BECA, according to which the failure to keep the time of presentment must be proven by the person who claims it (i.e. the debtor, usually). It is this unfavorable position of the debtor that is often the key opening a way for the creditor to achieve seemingly lost recourse.

The law recognizes two exceptions to the rule of compulsory presentment. The first exception concerns the bills of exchange that have already been protested because of non-acceptance. The very protest for non-acceptance provided the possessor with the right to recourse against indirect debtors and a new presentment of the bill would bring the possessor nothing. For this reason the possessor may, in certain circumstances, completely lose motivation for presenting the due bill for payment if there is a possibility of achieving the payment before the bill maturity from a solvent debtor under recourse.

The second exception may be, under certain circumstances, the cases when the presentment of the bill is barred by insurmountable obstacles caused by vis major (Article I, Section 54, BECA).

The person to whom the bill is presented is designated as presentee. With the bill of exchange it is the drawer, with the draft it is the drawee (regardless of the bill being accepted or not) but not its avalists. In case of the domiciled bill of exchange it is necessary to present the bill to the domicilee. As for indirect debtors, the bill is not presented to them at maturity, the possessor only exercising the right to recourse against them if needed.

There is a special payment procedure with the bills at sight that are payable on presentment (comp. Article I, Section 34, BECA). Unlike ordinary bills, with bills at sight the “classic” order maturity – presentment is actually reversed: the bill at sight must be first presented to be payable.

The bill at sight must be presented for payment within one year since the date of drawing at the latest (comp. Article I, Section 34, Paragraph 1, BECA). This period may be extended or shortened by the drawer. The period may also be shortened by the endorser; of course, with effects against himself. If the drawer has used his power to prohibit presentment of the bill before a certain date (comp. Article I, Section 34,

Paragraph 2, BECA), the bill at sight may be duly presented only on that day. The above mentioned protective period for presentment of the bill (one year by operation of law) runs then from that day. If the creditor did not present the bill for payment within the required period the rights against the debtors extinguished.

As for the time of presentment of the other types of bills of exchange, Article I, Section 38, Paragraph 1, BECA, establishes that the bill should be presented for payment on the day of payment or on one of the two following working days. This applies for the bills with maturity on a certain day (fixed bills), the bills payable at a certain time after the date of drawing (time drafts) and the bills payable at a certain time after sight (time drafts).

With time drafts special preconditions must be fulfilled. With these bills the previous acceptance by the drawee must be furnished with a date (the due day results indirectly from this date). If this does not happen a protest must be made for non-dated acceptance⁴. Similarly, the bills of exchange at sight must be provided with the so-called dated sight (i.e. a clause that the bill was presented at a certain date). If the possessor omitted to protest the bill in a non-dated acceptance or at a non-dated sight, it holds (Article I, Sections 23 and 78, BECA) that the bill was accepted (or seen) on the last day of the stipulated period (corroboratively, this period is one year long, comp. the above mentioned provision). Rights against indirect debtors are extinguished, of course, too (comp. Article I, Section 53, Paragraph 1, BECA).

For the presentment of the bill of exchange a relatively short, three-day, period is established, starting on the day of payment and the following two working days. Reasons for such relatively short periods may be found in the efforts of the lawgiver to make the bill relationships clear as soon as possible: the indirect debtors may learn in quite a short time whether they will be affected because of non-payment.

The bill of exchange may be presented only on working days (comp. Article I, Section 72, Paragraph 1, BECA) from which follows that the day of maturity and the day of payment may differ (again, there is an exception for bills at sight which may be presented only on working days). The maturity day may be the payment day only when it is a working day. The following two working days are then the so-called presentment days.

⁴Comp. in detail Article I, Sections 23 and 35, BECA. The possessor cannot be relieved from the duty of protest by a clause without protest (arg. Article I, Section 46, Paragraph 1 a contrario)

This may be illustrated with a simple example. Suppose, there is a fixed bill of exchange with the day of maturity which falls on a Saturday. The maturity day is then Saturday, the payment day is Monday and the bill may be presented also on the following two working days, i.e. on Tuesday and Wednesday (presentment days). However, if Wednesday is a bank holiday the third presentment day is Thursday.

The bill of exchange is presented in the place of payment which always follows from the bill (at least indirectly – on the basis of the legal place of payment). Ideally, the place of payment is specified in such a definite way that no special and time-consuming search is needed. However, for the bill to be valid a relatively general piece of information suffices (for example, “Prague”). Nevertheless, such information is, understandably, not very clear for the bill participants. As it is with acceptance, the concrete place of presentment is specified according to rules included in Section 87, BECA.

The presentation of the bill of exchange shall be made in the premises where he does business or, if there are no such premises or if they cannot be located, in his apartment. The acts may be performed in other places only with the consent of both parties; the consent shall be noted in the protest.

The debtor is entitled to make the payment dependent on handing over the bill of exchange. Pursuant to Article I, Section 39, Paragraph 1, BECA, the debtor may demand that the bill should be handed over to him by the possessor with a receipt for payment. The payment is usually acknowledged on the reverse of the bill and accompanied by the signature of the presenter of the bill. The payment for the bill should always take place against the handing over of the bill. If the debtor does not withdraw the bill from circulation he exposes himself to the danger of double-payment (if a dishonest possessor has transferred the bill on a third person despite of it being paid for).

The possessor of the bill of exchange must not refuse partial payment (comp. Section 39, Paragraph 2, BECA). However, by partial payment of the direct debtor it is only the rights in the paid part that have expired and in the remaining scope it is necessary to deal with the bill as if it were not paid for. The drawer may determine the bill sum of money even in a currency which is not the legal tender in the place of payment. For these cases, the law establishes certain rules about payment in Article I, Section 41.

When a bill of exchange is drawn payable in a currency which is not that of the place of payment, the sum payable may be paid in the currency of the country, according to its value on the date of maturity. If the debtor is in default, the holder may at his option demand that the amount of the bill be paid in the currency of the country according to the rate on the day of maturity or the day of payment. The usages of the place of payment determine the value of foreign currency. Nevertheless, the drawer may stipulate that the sum payable shall be calculated according to a rate expressed in the bill. These rules shall not apply to the case in which the drawer has stipulated that payment must be made in a certain specified currency (stipulation for effective payment in foreign currency).

The bill of exchange, as a typical circulating security, may actually change its possessor without any restrictions. The debtor to whom the due bill is presented by an unknown person finds himself in an uncertain position: there is not enough time for investigating the entitlement of the presenter because of very short presentment periods. There is a danger that the debtor pays a person that has not been entitled to claiming the bill rights. Also, there are unfavorable consequences, of course, if the debtor does not pay: there may be recourse against him for non-payment (Article I, Section 48, BECA) and he may suffer a certain loss of reputation he has enjoyed so far.

This dilemma is solved to a large extent by Article I, Section 40, Paragraph 3, BECA.

The payment for the bill by the direct debtor is an ideal and desirable termination of bill relationships. By the proper payment for the bill by the drawee, or for the promissory note by the maker, all bill rights extinguish. However, it is not always the case that bill relationships are terminated in this desirable manner.

In case of non-payment for the bill (including only a partial payment) the possessor may exercise his right of recourse against indirect bill debtors, i.e. against the endorsers, the drawer, the givers of aval and the acceptor in honour (comp. Article I, Section 58, BECA). With partial payments recourse against indirect debtors is restricted, of course, to the unpaid part of the bill sum. If the bill does not include the clause “without protest”, the further necessary step is protesting the bill.

22. Protesting the bill of exchange

Few institutes of the law of bills of exchange are understood in such a wrong manner as the bill protest. It is, though, quite clear: the bill protest is a written qualified certificate that a certain participant of the bill relationships (the debtor, usually) was asked to fulfill his obligations (to pay the bill, usually) but he failed to do so. The content of the certificate and the organs that may issue such an instrument are determined by the law (comp. Article I, Sections 79 and 80, BECA).

In addition to evidentiary purposes, the protest has the effect of the second preserving act (the first one being presentment). If the possessor does not have this certificate issued, it can even lead, in some cases, to extinction of bill rights. As a typical example we may mention the extinction of rights against all indirect debtors which happens when the periods set for protesting non-acceptance or non-payment are missed (in detail, see Article I, Section 53, Paragraph 1, BECA).

The possessor may be relieved from the duty of protest by including the clause “without protest” in the bill (or by a clause of a similar meaning).

Protest must contain: the names of the persons for whom and against whom it is being made; the information that the person against whom the protest is being made has been, to no avail, requested to act on the bill of exchange, or that the person could not be contacted, or that neither the premises where he does business nor his apartment could be located; the information about the place and time when the request or the failed attempt at such a request has been made; a note, in cases of acceptance or payment for honour, from whom, for whom and how the acceptance or the payment for honour was offered or made; in the event that the drawee to whom the bill of exchange was presented for acceptance requests that it be presented to him again on the following day, a note about this fact; a literal copy of the bill of exchange (copy) with all endorsements and a notes; the signature of the protesting body and the official seal or the official stamp.

23. Bill notification

If the bill was not accepted or paid for, the possessor may exercise his rights of recourse against indirect debtors after accomplishing preserving acts (i.e. after presenting the bill, or after properly protesting the bill). For these persons a potential danger, which has not been perhaps taken quite seriously, becomes a real and very topical matter.

Article I, Section 45, BECA, imposes a notification duty on certain persons so that the debtors are informed as soon as possible about the bill being in distress (i.e. that it was not accepted or paid for) and, consequently, about the danger of possible recourse against them. In the Czech law notification is not a preserving act; a person who does not give notice within the limit of time does not forfeit his rights. He is responsible for the injury, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange. The holder must give notice of non-acceptance or non-payment to his endorsers and to the drawer within the four working days which follow the day for protest or, in case of a stipulation "free of expenses", the day for presentment. Every endorser must within the two working days following the day on which he receives notice, notify his endorser of the notice, notify his endorsers of the notice he has received, mentioning the names and addresses of those who have given the previous notices, and so on through the series until the drawer is reached. The periods run from the receipt of the preceding notice. When notice is given to a person who has signed a bill, the same notice must be given within the same limit of time to his aval. The notice may be given in any form whatever, even by simply returning the bill of exchange. A person who must give notice must prove that he has given notice within the time allowed.

24. Recourse

All drawers, acceptors, endorsers or avals of a bill of exchange are jointly and severally liable to the holder. The holder has the right of proceeding against all these persons individually or against some of them or collectively without being required to observe the order in which they have become bound.

a) Persons involved in recourse relating to bills of exchange

The persons against whom recourse is taken are referred to as parties under recourse. The other person is a party taking recourse.

The first person among the debtors is the drawer. He is liable for payment and acceptance of the bill pursuant to Article I, Section 9, BECA. Recourse against him will be taken by the possessor if the bill is not accepted or – which is more usual in practice – if the bill was paid for by the direct debtor. As mentioned above, the drawer could exclude his liability for acceptance (but not his liability for payment – a possible

clause of this meaning would be considered as having never been written, comp. Article I, Section 9, Paragraph 2, BECA).

The typical party under recourse is the endorser who is liable for acceptance of and payment for the bill with the exception of a special type of endorsement (see above the section about various types of endorsement, especially the exonerating and the direct endorsements and the sub-endorsement). Parties under recourse may also be the givers of aval for these persons and the acceptors in honour.

Although direct debtors are not parties under recourse the content of claims against them practically does not differ. Within recourse all debtors are treated equally regardless of whether they are direct or indirect ones.

Table: Types of Recourse Relating to Bills of Exchange

Type of Recourse	Legal Regulation
For non-acceptance (first recourse before maturity of the bill)	Art. I, Sec. 44, par. 1 BECA
For uncertainty (the second recourse before maturity of the bill)	Art. I, Sec. 43, par. 2, points 2 and 3 BECA
For non-payment	Art. I, Sec. 43, par. 1 BECA

The content of rights of recourse depends on whether recourse is taken by the possessor of the bill or by the debtor involved in recourse who has already paid for the bill and now he is taking recourse against his predecessors. The former is referred to as recourse in the first degree, the latter as recourse relating to reimbursement.

It follows from Article I, Section 48, Paragraph 1, BECA, that the possessor may, within the first recourse, demand from any liable debtor:

1. the bill sum of money (with possible interest)
2. six per cent interest since the day of maturity
3. expenses (especially the expenses on protest and notification)
4. provision

The bill sum of money is the sum stated in the bill of exchange (its nominal value). An interest stated in the text of the bill may be added to that pursuant to the provision

mentioned above (but only with bills at sight or time bills at sight). If the bill has been partially paid, then the sum which can be demanded by the possessor within recourse is automatically decreased.

With recourse before maturity (i.e. recourse for non-acceptance or endangering) it is necessary to deduce the interest for the interim period from the bill sum of money. This is calculated according to the discount rate of the Czech National Bank valid on the day of recourse in the domicile of the possessor.

The possessor is further entitled to demand a six per cent interest since the day of maturity. This interest must be strictly distinguished from the interest on bills at sight and time bills at sight according to the previous paragraph. The interest running starts on the day of maturity and runs until the day of payment for the bill by the debtor under recourse. From this it is apparent that within possible recourse this interest cannot be demanded before maturity.

The other rights of the possessor are connected especially with reimbursement of expenses on protest and notification. However, the law does not exclude reimbursement of other expenses which the possessor may suffer (but it does not include legal costs the reimbursement of which may be claimed pursuant to procedure regulations). If the possessor protested non-acceptance or non-payment even if he was relieved from that duty by a clause in the bill (for example, in the wording “without protest”), the expenses on the protest do not become part of rights relating to recourse. As useless, these expenses are borne by the possessor himself.

The last right of the possessor within the first recourse is his right to demand payment of provision (bill provision). It is a special form of financial satisfaction which is a compensation for the possessor’s expenses and suffering linked with recourse (loss of time and energy).

Pursuant to Article I, Section 48, Paragraph 1, Point 4, BECA, the provision is 1/3 per cent of the bill sum of money. The cited provision allows for the rate to be decreased by a clause in the bill. The right to provision also arises in situations when the possessor has protested the bill in spite of being relieved from that duty by the drawer’s clause. As the expenses according to paragraph 3, the provision is a lump sum of cash without interest; within the first recourse the six per cent interest cannot be paid on it.

The party taking recourse must hand over the bill with a protest and a certificate about payment – the so-called restituting receipt – to the party under recourse. It is

improper to attach an acquaintance on payment as it is in the case of the direct payment for the bill (comp. Article I, Section 39, Paragraph 1, BECA), because if it is not quite clear from the certificate that it only concerns the payment by a concrete debtor under recourse, one may rightly conclude that the bill was paid for by the direct debtor (and that all bill rights have extinguished).

The person who paid for the bill in the first recourse acquires the right to take his own recourse (recourse in the second degree). Here, the party taking recourse is the previous person against whom recourse was taken. This procedure may repeat in more degrees (according to the number of debtors in the bill). Just as the possessor, the new party taking recourse – and, of course, the parties taking recourse in other degrees - is not bound by the order of his predecessors.

For reimbursement there is a relatively short six-month time of limitation.

The content of rights relating to recourse follows from Article I, Section 49, BECA. A party who takes up and pays a bill of exchange can recover from the parties liable to him: 1. The entire sum which he has paid; 2. Interests on the said sum calculated at the rate of 6 per cent, starting from the day when he made payment; 3. Any expenses which he has incurred; 4. provision, which is to be calculated according to Section 48 par. 1 and 4.

25. Limitation

Limitation of rights relating to bills of exchange is regulated by Article I, Section 70, BECA. Limitation periods mentioned there mostly differ from the general limitation periods pursuant to Civil Code or Commercial Code. General principles hold, of course. The rights relating to bills of exchange are not cancelled by limitation but – if the debtor alleges the limitation of time – the right to recognition of these rights by the court, or by another authority, extinguishes. If a debt subject to limitation is accepted it is not unjust enrichment for the creditor. All actions arising out of a bill of exchange against the acceptor are barred after three years reckoned from the date of maturity. Actions by the holder against the endorsers and against the drawer are barred after one year from the date of a protest drawn up within proper time, or from the date of maturity where there is a stipulation “without costs”. Actions by endorsers against each other and against the drawer are barred after six months, reckoned from the

day when the endorser took up and paid the bill or from the day when he himself was sued.

26. Bills of exchange with a foreign element

Despite laws of negotiable instruments of most countries being unified in the Geneva system there are many issues of law of negotiable instruments and related matters that are solved differently. In many issues (for example, capacity relating to bills of exchange) individual countries have retained their own regulations. The uniform character of law of negotiable instruments is also eroded by a lot of exemptions that contracting parties could make use of. In addition, there may appear in bill relationships a foreign element from countries that have not adopted the Geneva regulation of bills of exchange. In these cases the respective conflict rules of the BECA will apply.

The BECA includes – in conformity with requirements of the third Geneva Convention for the Settlement of Certain Conflicts of Law in connection with Bills of Exchange and Promissory Notes – a very detailed list of eight conflict rules (Article I, Sections 91 – 97, BECA). According to them, it will be determined which of the respective legal orders should be used for bill relationships with a private law element. In accordance with the Convention and its name (Convention destinée à régler certains conflits de lois“) the BECA only provides for some issues of the law of negotiable instruments with a foreign element. It is necessary to deal with the respective loopholes pursuant to Act No 97/1963 Coll. on International Private and Procedural Law. In relation to this law BECA is a special regulation which has to be applied preferentially.

a) Passive capacity in relation to bills of exchange

The first of the conflict rules relating to bills of exchange is Article I, Section 91, BECA, which regulates passive capacity of natural persons in relation to bills of exchange. According to this provision, a person's capacity to bind oneself by a bill of exchange is governed by the law of the state of which he is a national. There are two exceptions to this rule according to BECA:

Firstly, it is the case when the law of the state of which the respective person is a national refers to the law of another state. The law acknowledges such a reference – transmission – stating that in such a case the law of the state which is being referred to takes precedence.

In the second exception, the territorial principle takes precedence. He who lacks capacity to bind himself according to the above mentioned law will eventually be legally bound if he signs a bill of exchange in a state whose law provides for him being capable to bind himself by a bill of exchange. If a foreigner, who attains majority at 24 in his state, signs a bill of exchange at 19 in his state, he will not be bound by the bill. However, if he signs the bill in the Czech Republic he will be legally bound because, according to the Czech law, he would be of legal age. In this case, the law of the state of which the respective signer is a national is not taken into consideration but *lex loci actus* decides. What matters is the actual place not the information in the bill of exchange.

The Czech law of negotiable instruments has not made use of the stipulation pursuant to Article 2, Paragraph 3, of the Convention, which allows the contracting parties not to recognize as valid obligations from bills of exchange made by their members abroad which would otherwise be valid pursuant to *lex loci actus*. The states that made use of this licence (for example, Germany, Austria and Poland) introduced a certain exception to the exception in favor of their nationals and their law. If he who is not of legal age yet, pursuant to the law of his state, signs a bill of exchange in a state in which he would already be of legal age, he will not be bound by the bill. For example, the bill capacity of German nationals who have signed a bill of exchange abroad will be considered pursuant to the general German law. The German and Austrian regulations prevent from circumventing the legislation about legal capacity, i.e. situations when a minor signs a bill of exchange in a state where he would already be of legal age pursuant to the local law and thus binds himself. The Czech law does not have such a protective measure.

b) Form of declaration on bill of exchange

The form of declaration on a bill of exchange made by all participants is regulated by the law of the state in which the declaration has been made (Article I, Section 92, BECA, Paragraph 1, BECA). The law only mentions the form of the declaration. It

does not include issues of capacity relating to bills of exchange, effects of declarations on bills of exchange, forms of protest, etc.

As for the form of declarations on bills of exchange, the rule of "*locus regit actum*" applies again and what matters is the actual place, not the place stated in the bill.

Within the states of the Geneva system this provision is of lesser importance as regulations of the Geneva law of negotiable instruments bills are basically unified as far as the form of acts relating to bills of exchange is concerned. Within the Geneva law one may only expect a surprise in three areas: some states could make use of Article 19, Stipulations (Annex II, Convention on Unified Law of Bills of Exchange) and, for example, substitute the stipulation relating the promissory note with a mere order-clause. The promissory note will then be valid according to the law of these states in spite of not bearing the designation as a bill of exchange provided it includes the information that it is drawn "to order". Another formal question that could be considered differently in individual states is the possibility of replacing the signature in the bill of exchange by an official declaration written in the bill (Article 2, Stipulations). The third formal difference could concern the guarantee relating to bills of exchange which may be (with the license included in Article 4, Stipulations) taken over on a separate document in some states (not only in the bill of exchange or in a duplicate as is the case in the Czech Republic) provided the document states the place where it was drawn.

For the case that the bill of exchange would include more declarations on bill of exchange the law expressly acknowledges the principle of separate declarations on bills of exchange. Pursuant to Section 92, Paragraph 3, BECA, if the declaration on bill of exchange is invalid according to the law of the state in which it was made but is in conformity with the law of the state in which a later declaration on bill of exchange was made, then the defective form of the former declaration does not affect validity of the latter one.

It is not always necessary to use the conflict rule of *lex loci actus* for determining the law applicable to the form. An exception to the principle of territoriality is included in Article I, Section 92, Paragraph 3, BECA, according to which a declaration on bill of exchange made abroad by a Czech citizen is valid in the Czech Republic even against other Czech citizens provided it conforms to the requirements of the Czech law. As for relationships among Czech citizens, the

principle of personality of law applies and the place in which the declaration was made is not decisive.

c) Effects of declarations on bill of exchange

The effects of binding declarations of the acceptor of a bill of exchange and the maker of a promissory note are regulated by the law of the state in which these instruments are payable (Article I, Section 93, Paragraph 1, BECA). The effects of other declarations on bill of exchange are regulated by the law of the state in which they were made (Article I, Section 93, Paragraph 2, BECA). Both provisions are of general nature and apply if other provisions of the BECA (see hereinafter) do not state otherwise.

The effects of these declarations include primarily the range and the content of liability of the respective drawee and payee, prerequisites of their enforceability and performance and reasons for their termination.

d) Limits of time for exercise of right of recourse

Pursuant to Article I, Section 94, BECA, the limits of time for exercise of right of recourse are regulated by the law of the place where the bill of exercise was drawn. The regulation of limits of time for exercise of right of recourse must be strictly distinguished from limits of time for protest which are regulated separately by Section 97, BECA, and where the conflicting criterion is the place in which it is necessary make the protest. At the same time it is necessary to distinguish them from limits of time for exercise of rights to bill of exchange against direct debtors which are regulated by Section 93, Paragraph 1, BECA (see the previous section hereinabove).

e) Acquiring a debt which gives rise to a bill of exchange being drawn (“provison”)

The issue of whether the possessor of a bill of exchange acquires a debt which gives rise to its drawing is determined by the law of the place in which the bill of exchange has been drawn. It is the case of the so-called remittance (provision in French) which is unknown to the Czech law of negotiable instruments and which is expressly declined by the Anglo-American law (conf. UCC Se 3 – 408: „A check or other draft

does not itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it"). In the countries of the French system of law of negotiable instruments it is a traditional institute. It is regulated, for example, in Article 116 of the French Code de commerce, but it can also be found in legal orders of a number of other countries.

Pursuant to these regulations, the owner of a bill of exchange acquires a debt which gives rise to drawing a bill of exchange. Put simply, it is a legal cessation of the right which establishes the drawer's claim against the drawee to accept the bill of right. This right of the drawer's may result, for example, from special agreements between the drawer and the drawee about the acceptance of the bill of exchange. The transition of provision protects the possessor in the case of the drawer being declared bankrupt. If the claim were included in the bankrupt's assets, we could hardly expect the drawee to comply with the drawer's order and to bind himself towards the possessor of the bill by accepting it. However, as provision passes to the possessor of the bill by operation of law (Article 116, Paragraph 3, Code de commerce), it gets out of the reach of the trustee in bankruptcy and the drawee is then of course motivated to acceptance even in relation to the possessor of the bill of exchange. Therefore provision provides the assignee of a non-accepted bill of exchange (regardless of whether it is the drawee or other assignees) with an additional certainty that the bill of exchange will really be accepted by the drawee.

If Article I, Section 95, BECA, establishes as decisive the law of the place where the bill of exchange was drawn it may be debatable whether it is the place of drawing recorded in the bill of exchange or the actual place of drawing. I tend to agree with the opinion that the place recorded in the bill of exchange is decisive. In addition to other reasons, it is necessary to say so with regard to certainty of assignees of the bill of exchange. They should recognize directly from the document (from the record of the place of drawing) whether they may acquire the debt which gave rise to the bill of exchange being drawn.

In doing so, the regime of the obligation relating to the bill cannot be broken as it is governed by the same determining criterion of the law of the place of drawing (pursuant to Article I, Section 93 BECA, see hereinabove the explanation about effects of obligatory statements of the drawee).

f) Partial acceptance and partial payment

The question whether acceptance may be restricted to part of the sum (in the Czech regulation, comp. Article I, Section 26, Paragraph 1 BECA) or whether the possessor is bound to accept also partial payment (comp. Article I, Section 39, Paragraph 2, BECA) is governed by the law of the country in which the bill of exchange is payable.

g) Form of protest and time of limits for protest

Pursuant to Article I, Section 97, BECA, “the form of protest and the limits of time for protest, as well as the form for the exercise or preservation of rights concerning bills of exchange or promissory notes, are regulated by the laws of the country in which the protest must be drawn up or the measures in question taken”.

In addition to the protest, the preservation or exercise of rights concerning bills of exchange is also achieved by presentment of the bill of exchange to acceptance (or intervention acceptance) or presentment to payment (or intervention payment). However, the BECA provision cited hereinabove concerns only the form of these acts. In protests, it concerns such matters as, for example, determining the bodies relating to protest, essential elements of protest instruments, protest stipulations in the bill of exchange, etc. The law of the country where it is necessary to protest a bill of exchange also governs the time of limits for protest.

However, the question whether to act at all will be considered according to the conflict criterion for effects of obligations relating to bills of exchange (comp. Article I, Section 93, BECA).

h) Measures taken in case of loss or theft of the bill of exchange

The last conflict rule of the Czech regulation of bills of exchange is Article I, Section 98, BECA, concerning measures to be taken if a bill of exchange was lost or stolen. The connecting factor is here the law of the place where the bill of exchange is payable (*lex loci solitionis*). It means that the measures the possessor should take in case of loss or theft of the bill of exchange are governed by the law of

the country where the bill of exchange is payable. The law does not specify the form of these measures. Usually, it is a motion for discharging or a similar procedure.

Bill of Exchange and Cheque Act No. 191/1950

(“BECA”)

Article I
Bill of Exchange and Promissory Note
Part one
Bill of Exchange
Title one
Issue and Form of the Bill of Exchange

Section 1

A bill of exchange contains: 1. The term “bill of exchange” inserted in the body of the instrument and expressed in the language employed in drawing up the instrument; 2. An unconditional order to pay a determinate sum of money; 3. The name of the person who is to pay (drawee); 4. A statement of the time of payment; 5. A statement of the place where payment is to be made; 6. The name of the person to whom or to whose order payment is to be made; 7. A statement of the date and of the place where the bill is issued; 8. The signature of the drawer.

Section 2

(1) An instrument in which any of the requirements mentioned in the preceding section is wanting is invalid as a bill of exchange, except in the cases specified in the following paragraphs. (2) A bill of exchange in which the time of payment is not specified is deemed to be payable at sight. (3) In default of special mention, the place specified beside the name of the drawee is deemed to be place of payment, and at the same time the place of the domicile of the drawee. (4) A bill of exchange which does not mention the place of its issue is deemed to have been drawn in the place mentioned beside the name of the drawer.

Section 3

(1) A bill of exchange may be drawn payable to drawer’s order. (2) A bill of exchange may be drawn on the drawer himself. (3) A bill of exchange may be drawn for

account of third person.

Section 4

A bill of exchange may be payable at the third person either in the locality where the drawee has his domicile or in another locality.

Section 5

(1) When a bill of exchange is payable at sight, or at a fixed period after sight, the drawer may stipulate the sum payable shall bear interest. In the case of any other bill of exchange, this stipulation is deemed not to be written. (2) The rate of interest must be specified in the bill of exchange; in default of such specification, the stipulation shall be deemed no to be written. (3) Interest runs from the date of the bill of exchange, unless some other date is specified.

Section 6

(1) When the sum payable by bill of exchange is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. (2) When the sum payable by bill of exchange is expressed more than once in words or more than once in figures, and there is a discrepancy, the smaller sum is the sum payable.

Section 7

If a bill of exchange bears signatures of persons incapable of binding themselves by a bill of exchange, or forged signatures, or signatures of fictitious persons, or signatures which for any other reason cannot bind the person who signed the bill of exchange or on whose behalf it was signed, the obligations of the other persons who have signed it are none the less valid.

Section 8

Whosoever puts his signature on a bill of exchange as representing a person for whom he had no power to act is bound himself as a party to the bill of exchange and, if he pays, has the same rights as the person for whom he purported to act. The

same rule applies to a representative who has exceeded his powers of agency.

Section 9

(1) The drawer guarantees both acceptance and payment. (2) He may release himself from guaranteeing acceptance; every stipulation by which he releases himself from the guarantee of payment is deemed not to be written.

Section 10

If a bill of exchange, which was incomplete when issued, has been completed otherwise than in accordance with the agreements entered into, the non-observance of such agreements may not be set up against the holder unless he has acquired the bill of exchange in bad faith or, in acquiring it, has been guilty of gross negligence.

Title two

Endorsement

Section 11

(1) Every bill of exchange, even if not expressly drawn to order, may be transferred by the endorsement. (2) When the drawer has inserted in a bill of exchange the words "not to order" or an equivalent expression, the instrument can only be transferred according to the form, and with the effects, of an ordinary assignment. (3) The bill may be endorsed even to the drawee, whether he has accepted or not, or to the drawer, or to any other party to the bill. These persons may reendorse the bill.

Section 12

(1) An endorsement must be unconditional. Any condition to which it is made subject is deemed not to be written. (2) A partial endorsement is null and void. (3) An endorsement to Bearer is deemed to be an endorsement in blank.

Section 13

(1) An endorsement must be written on the bill of exchange or on a slip affixed

thereto (allonge). It must be signed by the endorser. (2) The endorsement may leave the endorsee (to whom the bill is transferred by means of endorsement) unspecified; the endorsement may consist simply of the signature of the endorser (endorsement in blank). In the latter case, the endorsement, to be valid, must be written on the back of the bill of exchange or on the slip attached thereto.

Section 14

(1) An endorsement transfers all the rights arising out of a bill of exchange. (2) If the endorsement is in blank, the holder may: a) fill up the blank either with his own name or with the name of some other person; b) reendorse the bill in blank, or to some other person; c) transfer the bill to a third person without filling up the blank, and without endorsing it.

Section 15

(1) In the absence of any contrary stipulation the endorser guarantees acceptance and payment. (2) He may prohibit any further endorsement; in this case, he gives no guarantee to the persons to whom the bill is subsequently endorsed.

Section 16

(1) The possessor of a bill exchange is deemed to be the lawful holder if he establishes his title to the bill through an uninterrupted series of endorsements, even if the last endorsement is in blank. In this connection, cancelled endorsements are deemed not to be written. When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the bill by the endorsement in blank. (2) Where a person has been dispossessed of a bill of exchange, in any manner whatsoever, the holder who establishes his right thereto in the manner mentioned in the preceding paragraph is not bound to give up the bill unless he has acquired it in bad faith, or unless in acquiring it he has been guilty of gross negligence.

Section 17

Persons sued on a bill of exchange cannot set up against the holder defences

founded on their personal relations with the drawer or with previous holders, unless the holder, in acquiring the bill, has knowingly acted to the detriment of the debtor.

Section 18

(1) When an endorsement contains the statements “value in collection”, “for collection”, “by procuration” or any other statement implying a simple mandate, the holder may exercise all rights arising out of the bill of exchange, but he can only endorse it by the means of the endorsement for collection. (2) In this case, the parties liable can only set up against the holder objections which could be set up against the endorser. (3) The mandate contained in an endorsement by procuration does not terminate by reason of the death of the party giving the mandate or by reason of his becoming legally incapable.

Section 19

(1) When an endorsement contains the statements “value in security”, “value in pledge” or any other phrase implying a pledge, the holder may exercise all rights arising out of the bill of exchange, but an endorsement by him has the effects only of an endorsement for collection. (2) The parties liable cannot set up against the holder defences founded on their personal relations with the endorser, unless the holder in receiving the bill, has knowingly acted to the detriment of the debtor.

Section 20

(1) An endorsement after maturity has the same effects as an endorsement before maturity. Nevertheless, an endorsement after protest for nonpayment, or after expiration of the limit of time fixed for drawing up the protest, operates only as an ordinary assignment. (2) Failing proof to the contrary, an endorsement without date is deemed to have been placed on the bill before the expiration of the limit of time fixed for drawing up the protest.

Title three

Acceptance

Section 21

Until maturity, a bill of exchange may be presented to the drawee for acceptance at his domicile, either by the holder or by a person who is merely in possession of the bill.

Section 22

(1) In any bill of exchange, the drawer may stipulate that it shall be presented for acceptance, with or without fixing a limit of time for presentment. (2) Except in the case of a bill payable at the address of a third party or in a locality other than that of the domicile of the drawee, or , except in the case of a bill drawn payable at a fixed period after sight, the drawer may prohibit presentment for acceptance. (3) He may also stipulate that presentment for acceptance shall not take place before a named date. (4) Unless the drawer has prohibited acceptance, every endorser may stipulate that the bill shall be presented for acceptance, with or without fixing a limit of time for presentment.

Section 23

(1) Bill of exchange payable at a fixed period after sight must be presented for acceptance within one year of its date of issue. (2) The drawer may abridge or extend this period. (3) These periods may be abridged by the endorsers.

Section 24

(1) The drawee may demand that a bill shall be presented to him a second time on the day after the first presentment. Parties interested are not allowed to set up that this demand has not been complied with unless this request is mentioned in the protest. (2) The holder is not obliged to surrender to the drawee a bill presented for acceptance.

Section 25

(1) An acceptance is written on the bill of exchange. It is expressed by the word "accepted" or any other equivalent term; it is signed by the drawee. The simple signature of drawee on the face of the bill is deemed to be an acceptance. (2) When

the bill is payable at a certain time after sight, or when it must be presented for acceptance within a certain limit of time in accordance with a special stipulation, the acceptance must be dated as of the day when the acceptance is given, unless the holder requires that it shall be dated as of the day of presentment. If it is undated, the holder, in order to preserve his right of recourse against the endorsers and the drawer, must authenticate the omission by a protest drawn up within the proper time.

Section 26

(1) An acceptance is unconditional, but the drawee may restrict it to part of the sum payable. (2) Every other modification introduced by an acceptance into the tenor of the bill of exchange operates as a refusal to accept. Nevertheless, the acceptor is bound according to the terms of his acceptance.

Section 27

(1) When the drawee has designated on the bill a place of payment different from the place of domicile of the drawee, not stating a person with whom the payment is to be executed, the drawee may designate such a person when accepting the bill. Otherwise, it shall be deemed that the acceptant has undertaken an obligation to pay at the place of payment. (2) In case of a bill payable at the domicile of the drawee, the latter may designate in the acceptance the address of the place where payment is to be executed.

Section 28

(1) By accepting, the drawee undertakes to pay the bill of exchange at its maturity. (2) In default of payment, the holder, even if he is the drawer, has a direct action on the bill of exchange against the acceptor for all that can be demanded in accordance with Section 49 and 49.

Section 29

(1) Where the drawee who has put his acceptance on a bill has cancelled it before restoring the bill, acceptance is deemed to be refused. Failing proof to the contrary,

the cancellation is deemed to have taken place before the bill was restored. (2) Nevertheless, if the drawee has notified his acceptance in writing to the holder or to any party who has signed the bill, he is liable to such parties according to the terms of his acceptance.

Title four
Aval
Section 30

(1) Payment of a bill of exchange may be guaranteed by an aval as to the whole or part of its amount. (2) This guarantee may be given by a third person or even by a person who has signed as a party to the bill.

Section 31

(1) The aval is given either on the bill itself or on an allonge. (2) It is expressed by the words "as aval" or by any other equivalent formula. It is signed by the giver of the aval. (3) It is deemed to be constituted by the mere signature of the giver of the aval placed on the face of the bill, except in the case of the signature of the drawee of the drawer. (4) An aval must specify for whose account it is given. In default of this, it is deemed to be given for the drawer.

Section 32

(1) The giver of an aval is bound as the person for whom he has become guarantor. (2) His undertaking is valid even when the liability which he has guaranteed is inoperative for any reason other than defect of form. (3) He has, when he pays a bill of exchange, the rights arising out of the bill of exchange against the person guaranteed and against those who are liable to the latter on the bill of exchange.

Title five
Maturity of a Bill of Exchange
Section 33

(1) A bill of exchange may be drawn payable: at sight; at a fixed period after sight; at

a fixed period after date; at a fixed date. (2) Bills of exchange at other maturities or payable by installments are null and void.

Section 34

(1) A bill of exchange payable at sight is payable on presentment. It must be presented for payment within a year of its date. The drawer may abridge or extend this period. These periods may be abridged by the endorsers. (2) The drawer may prescribe that a bill of exchange payable at sight must not be presented for payment before a named date. In this case the period for presentment begins from this date.

Section 35

(1) The maturity of a bill of exchange payable at a fixed period after sight is determined either by the date of the acceptance or by the date of the protest. (2) In the absence of the protest, an undated acceptance is deemed, so far as regards the acceptor, to have been given on the last day of the limit of time for presentment for acceptance.

Section 36

(1) Where a bill of exchange is drawn at one or more months after date or after sight the bill matures on the corresponding date of the month when payment must be made. If there be no corresponding date, the bill matures on the last day of this month. (2) When a bill of exchange is drawn at one or more months and a half after date or sight, entire months must first be calculated. (3) If the maturity is fixed at the commencement, in the middle or at the end of the month, the first, fifteenth or last day of the month is to be understood. (4) The expression "eight days" or "fifteen days" indicate not one or two weeks, but a period of eight or fifteen days. (5) The expression "halfmonth" means a period of fifteen days.

Section 37

(1) When a bill of exchange is payable on a fixed day in a place where the calendar is different from the calendar in the place of issue, the day of maturity is deemed to

be fixed according to the calendar of the place of payment. (2) When a bill of exchange drawn between two places having different calendars is payable at a fixed period after date, the day of issue is referred to the corresponding day of the calendar in the place of payment, and the maturity is fixed accordingly. (3) The time for presenting bills of exchange is calculated in accordance with the rules of the preceding paragraph. (4) Provisions of this article do not apply if a stipulation in the bill or even the simple terms of the instrument indicate an intention to adopt some different rule.

Title six
Payment
Section 38

(1) The holder of a bill of exchange payable on a fixed day or at a fixed period after date or after sight must present the bill for payment either on the day on which it is payable or on one of the two business days which follows. (2) The presentment of a bill of exchange at a clearinghouse is equivalent to a presentment for payment.

Section 39

(1) The drawee who pays a bill of exchange may require that it shall be given up to him receipted by the holder. (2) The holder may not refuse partial payment. (3) In case of partial payment the drawee may require that mention of this payment shall be made on the bill, and that a receipt therefore shall be given to him.

Section 40

(1) The holder of a bill of exchange cannot be compelled to receive payment before maturity. (2) The drawee who pays before maturity does so at his own risk. (3) Who pays at maturity is validly discharged, unless he has been guilty of fraud or gross negligence. He is bound to verify the regularity of the series of endorsements, but not the signature of the endorsers.

Section 41

(1) When a bill of exchange is drawn payable in a currency which is not that of the place of payment, the sum payable may be paid in the currency of the country, according to its value on the date of maturity. If the debtor is in default, the holder may at his option demand that the amount of the bill be paid in the currency of the country according to the rate on the day of maturity or the day of payment. (2) The usages of the place of payment determine the value of foreign currency. Nevertheless, the drawer may stipulate that the sum payable shall be calculated according to a rate expressed in the bill. (3) The foregoing rules shall not apply to the case in which the drawer has stipulated that payment must be made in a certain specified currency (stipulation for effective payment in foreign currency). (4) If the amount of the bill of exchange is specified in a currency having the same denomination, but a different value in the country of issue and the country of payment, reference is deemed to be made to the currency of the place of payment.

Section 42

When a bill of exchange is not presented for payment within the limit of time fixed by Section 38, every debtor is authorized to deposit the amount with the competent court at the cost and risk of the holder.

Title seven

Recourse of Non-Acceptance and Non-Payment

Section 43

(1) The holder may exercise his right of recourse against the endorsers, the drawer and the other parties liable at the maturity if payment has not been made. (2) The holder has the same right even before maturity: 1. if there has been total or partial refusal to accept; 2. in the event of executive liquidation against the goods of the drawee, whether he has accepted or not, or in the event of a stoppage or where execution has been levied against his goods without result; 3. in the event of the executive liquidation against the drawer of a non-acceptable bill.

Section 44

(1) Default of acceptance or of payment must be evidenced by an authentic act (protest for non-acceptance or non-payment). (2) Protest for non-acceptance must be made within the limit of time fixed for presentment for acceptance. If, in the case contemplated by Section 24, subsection 1, the first presentment takes place on the last day of that time, the protest may nevertheless be drawn up on the next day. (3) Protest for non-payment of a bill payable on a fixed day or at a fixed period after date or sight must be made on one of the two working days following the day on which the bill is payable. In the case of a bill payable at sight, the protest must be drawn up under the conditions specified in the foregoing subsection for the drawing up of a protest for non-acceptance. (4) Protest for non-acceptance dispenses with presentment for payment and protest for non-payment. (5) If there is a stoppage of payment on the part of the drawee, whether he has accepted or not, or if execution has been levied against his goods without result, the holder cannot exercise his right of recourse until after presentment of the bill to the drawee for payment and after the protest has been drawn up. (6) In the event of executive liquidation against the goods of the drawee, whether he has accepted or not, or against the good of the drawer of a non-acceptable bill, the decision ordering liquidation is sufficient for exercising the right of recourse. The decision can be replaced by a promulgation noticing its publication.

Section 45

(1) The holder must give notice of non-acceptance or non-payment to his endorsers and to the drawer within the four working days which follow the day for protest or, in case of a stipulation "free of expenses", the day for presentment. Every endorser must within the two working days following the day on which he receives notice, notify his endorser of the notice, notify his endorsers of the notice he has received, mentioning the names and addresses of those who have given the previous notices, and so on through the series until the drawer is reached. The periods run from the receipt of the preceding notice. (2) When, in conformity with the preceding subsection, notice is given to a person who has signed a bill, the same notice must be given within the same limit of time to his aval. (3) Where the endorser either has not specified his address or has specified it in an illegible manner, it is sufficient that notice should be given to the preceding endorser. (4) The notice may be given in any

form whatever, even by simply returning the bill of exchange. (5) A person who must give notice must prove that he has given notice within the time allowed. This limit of time is fulfilled if the notice has been posted within the prescribed time. (6) A person who does not give notice within the limit of time does not forfeit his rights. He is responsible for the injury, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange.

Section 46

(1) The drawer, an endorser, or an aval may, by stipulation "without costs", "without protest", or any other equivalent expression written on the instrument and signed, release the holder from having protest of non-acceptance or non-payment drawn up in order to preserve his right of recourse. (2) This stipulation does not release the holder from presenting the bill within the prescribed time, not from the notices he has to give. The burden of proving the non-observance of the limits lies on the person who seeks to set it up against the holder. (3) If the stipulation is written by the drawer, it is operative in respect of all persons who have signed the bill; if it is written by an endorsers or an aval, it is operative only in respect of such endorser or aval. If, in spite of such stipulation written by the drawer, the holder has the protest drawn up, he must bear the costs thereof. When the stipulation emanates from an endorser or aval, the costs of the protest, if one is drawn up, may be recovered from all the persons who have signed the bill.

Section 47

(1) All drawers, acceptors, endorsers or avals of a bill of exchange are jointly and severally liable to the holder. (2) The holder has the right of proceeding against all these persons individually or against some of them or collectively without being required to observe the order in which they have become bound. (3) The same right is possessed by any person signing the bill who has taken it up and paid for it. (4) Proceeding against of the parties liable do not prevent proceedings against the others, even though they may be subsequent to the party first proceeded against.

Section 48

(1) The holder may recover from the person against whom he exercises his right of recourse: 1. The amount of the unaccepted or unpaid bill of exchange with interest, if interest has been agreed; 2. Interest at the rate of 6 per cent from the date of maturity; 3. The expenses of protest and of the notices given as well as other expenses; 4. Provision at the rate of 1/3 per cent of the amount of the unaccepted or unpaid bill of exchange. (2) If the right of recourse is exercised before maturity the amount of the bill shall be subject to a discount; this discount shall be calculated according to the official rate of discount of the State bank of Czechoslovakia ruling on the date when recourse is exercised at the place of domicile of the holder.

Section 49

A party who takes up and pays a bill of exchange can recover from the parties liable to him: 1. The entire sum which he has paid; 2. Interests on the said sum calculated at the rate of 6 per cent, starting from the day when he made payment; 3. Any expenses which he has incurred; 4. provision, which is to be calculated according to Section 48 par. 1 and 4.

Section 50

(1) Every party liable against whom a right of recourse is or may be exercised, can require, against payment, that the bill shall be given up to him with the protest and receipted account. (2) Every endorser who has taken up and paid a bill of exchange may cancel his own endorsement and those of subsequent endorsers.

Section 51

In the case of the exercise of the right of recourse after partial acceptance, the party who pays the sum in respect of which the bill has not been accepted can require that this payment shall be specified on the bill and that he shall be given a receipt therefore.

The holder must also give him a certified copy of the bill with the protest, in order to enable subsequent recourse to be exercised.

Section 52

(1) Every person having the right of recourse may, in the absence of agreement to the contrary, reimburse himself by means of a fresh bill (redraft) to be drawn at sight on one of the parties liable to him and payable at the domicile of that party. (2) The redraft includes, in addition to the sum mentioned in Section 48 and 49, brokerage and the cost of stamping the redraft. (3) If the redraft is drawn by the holder, the sum payable is fixed according to the rate for a sight bill drawn at the place where the original bill was payable upon the party liable at the place of his domicile. If the redraft is drawn by an endorser, the sum payable is fixed according to the rate for a sight bill drawn at the place where the drawer of the redraft is domiciled upon the place of domicile of the party liable.

Section 53

(1) After the expiration of the limits of time fixed for the presentment of a bill of exchange drawn at sight or at a fixed period after sight, for drawing up the protest for non-acceptance or non-payment, for presentment for payment in the case of a stipulation "without costs" the holder loses rights of recourse against the endorsers, against the drawer and against the other parties liable, with the exception of the acceptor. (2) In default of presentment for acceptance within the limit of time stipulated by the drawer, the holder loses his right of recourse for non-payment, as well as for non-acceptance, unless it appears from the terms of the stipulation that the drawer only meant to release himself from the guarantee of acceptance. (3) If the stipulation for a limit of time for presentment is contained in an endorsement, the endorser alone can avail himself of it.

Section 54

(1) Should the presentment of the bill of exchange or the drawing up protest within the prescribed limits of time be prevented by an insurmountable obstacle (legal regulation

by any State or other case of vis major), these limits of time shall be extended. (2) The holder is bound to give notice without delay of the case of vis major to his endorser and to specify this notice, which he must date and sign, on the bill or on an allonge; in other respects the provisions of Article 45 shall apply. (3) When vis major has terminated, the holder must without delay present the bill of exchange for acceptance or payment and, if need be, draw up the protest. (4) If vis major continues to operate beyond thirty days after maturity, recourse may be exercised, and neither presentment nor the drawing up of a protest shall be necessary. (5) In the case of bills of exchange drawn at sight or at a fixed period after sight, the time limit of thirty days shall run from the date on which the holder has given notice of vis major to his endorser; the notice can be given even before the expiration of the time for presentment. In the case of bills of exchange drawn at the certain time after sight, the time limit of thirty days shall be added to the period after sight specified in the bills of exchange. (6) Facts which are purely personal to the holder or to the person whom he has entrusted with the presentment of the bill of exchange or drawing up the protest are not deemed to constitute case of vis major.

Title eight

Intervention for Honour

1. General provisions

Section 55

(1) The drawer, an endorser, or an aval may specify a person who is to accept or pay in case of need (person named as referee in case of need). (2) A bill of exchange may, subject as hereinafter mentioned, be accepted or paid by a person who intervenes for the honor of any debtor against whom a right of recourse exists. (3) The person intervening by payment or acceptance may be a third party, even the drawee, or, save the acceptor, a party already liable on the bill of exchange. (4) The person intervening is bound to give, within two working days, notice of this intervention to the party for whose honor he has intervened. In default, he is responsible for the injury, if any, due to his negligence, but the damages shall not exceed the amount of the bill of exchange.

Acceptance for Honour

Section 56

(1) There may be acceptance by intervention in all cases where the holder has a right of recourse before maturity on a bill which is capable of acceptance. (2) When the bill of exchange indicates a person who is designated to accept or pay it in case of need at the place of payment, the holder may not exercise his rights of recourse before maturity against the person naming such referee in case of need and against subsequent signatories, unless he has presented the bill of exchange to the referee in case of need and until, if acceptance is refused by the latter, this refusal has been authenticated by a protest. (3) In other cases of intervention the holder may refuse an acceptance by intervention. Nevertheless, if he allows it, he loses his right of recourse before maturity against the person on whose behalf such acceptance was given and against subsequent signatories.

Section 57

Acceptance by intervention is specified on the bill of exchange. It is signed by the person intervening. It mentions the person for whose honor it has been given and, in default of such mention, the acceptance is deemed to have been given for the honor of the drawer.

Section 58

(1) The acceptor by intervention is liable to the holder and to the endorsers, subsequent to the party for whose honor he intervened, in the same manner as such party. (2) Notwithstanding an acceptance by intervention, the party for whose honor it has been given and the parties liable to him may require the holder, in exchange for payment of the sum mentioned in Section 48, to deliver the bill, the protest, and an receipted account, if any.

Payment for Honour

Section 59

(1) Payment by intervention may take place in all cases where, either at maturity or before maturity, the holder has a right of recourse on the bill. (2) Payment must include the whole amount payable by the party for whose honor it is made. (3) It must be made at the latest on the day following the last day allowed for drawing up the protest for non-payment.

Section 60

(1) If a bill of exchange has been accepted by persons intervening who are domiciled in the place of payment, or if persons domiciled there have been named as referees in case of need, the holder must present the bill to all these persons and, if necessary, have a protest for non-payment drawn up at the latest on the day following the last day allowed for drawing up the protest. (2) In default of protest within this limit of time, the party who has named the referee in case of need, or for whose account the bill has been accepted, and the subsequent endorsers, are discharged.

Section 61

The holder who refuses payment by intervention loses his right of recourse against any persons who would have been discharged thereby.

Section 62

(1) Payment by intervention must be authenticated by a receipt given on the bill of exchange mentioning the person for whose honor payment has been made. In default of such mention, payment is deemed to have been made for the honor of the drawer. (2) The bill of exchange and the protest, if any, must be given up to the person paying by intervention.

Section 63

(1) The person paying by intervention acquires the rights arising out of the bill of exchange against the party for whose honor he has paid and against persons who are liable to the latter on the bill of exchange. Nevertheless, he cannot re-endorse the bill of exchange. (2) Endorsers subsequent to the party for whose honor payment has

been made are discharged. (3) In case of competition for payment by intervention, the payment which effects the greater number of releases has the preference. Any person who, with a knowledge of the facts, intervenes in manner contrary to this rule, loses his right of recourse against those who would have been discharged.

Title nine

Parts of a Set and Copies

1. Parts of a Set

Section 64

(1) A bill of exchange can be drawn in a set of two or more (counter)parts. (2) These counterparts must be numbered in the body of the instrument itself; in default, each part is considered as a separate bill of exchange. (3) Every holder of a bill which does not specify that it has been drawn as a sole bill may, at his own expense, require the delivery of two or more counterparts. For this purpose he must apply to his immediate endorser, who is to proceed against his own endorser, and so in the series until the drawer is reached. (4) The endorsers are bound to reproduce their endorsements on the new parts of the set.

Section 65

(1) Payment made on one counterpart operates as a discharge, even though there is no stipulation that this payment annuls the effect of the other parts. Nevertheless, the drawee is liable on each accepted part which he has not recovered. (2) An endorser who has transferred parts of a set to different persons, as well as subsequent endorsers, are liable on all the parts bearing their signature which have not been restored.

Section 66

(1) A party who has sent one counterpart for acceptance must indicate on the other parts the name of the person in whose hands this counterpart is to be found. That person is bound to give it up to the lawful holder of another party. (2) If he refuses, the holder cannot exercise his right of recourse until he has had a protest drawn up

specifying: 1. That the counterpart sent for acceptance has not been given up to him on his demand ; 2. That acceptance of payment could not be obtained on another of the counterparts.

2. Copies

Section 67

(1) Every holder of a bill of exchange has the right to make copies of it. (2) A copy must reproduce the original exactly, with the endorsements and all other statements to be found therein. It must specify where the copy ends. (3) It may be endorsed and guaranteed by aval in the same manner and with the same effects as the original.

Section 68

(1) A copy must specify the person in possession of the original instrument. The latter is bound to hand over the original instrument to the lawful holder of the copy. (2) If he refuses, the holder may not exercise his right of recourse against the persons who have endorsed the copy or guaranteed it by aval until he has had a protest drawn up specifying that the original had not been given up to him on his demand. (3) Where the original instrument, after the last endorsement before the making of the copy, contains a clause “commencing from here an endorsement is only valid if he made on the copy” or some equivalent formula, a subsequent endorsement on the original is null and void.

Title ten

Alterations

Section 69

In case of alteration of the text of a bill of exchange or promissory note, parties who have signed subsequent to the alteration are bound according to the terms of the altered text; parties who have signed before the alteration are bound according to the terms of the original text.

Title eleven

Limitation of Actions

Section 70

(1) All actions arising out of a bill of exchange against the acceptor are barred after three years reckoned from the date of maturity. (2) Actions by the holder against the endorsers and against the drawer are barred after one year from the date of a protest drawn up within proper time, or from the date of maturity where there is a stipulation "without costs". (3) Actions by endorsers against each other and against the drawer are barred after six months, reckoned from the day when the endorser took up and paid the bill or from the day when he himself was sued.

Section 71

Interruption of the period of limitation is only effective against the person in respect of whom period has been interrupted.

Title twelve

General Provisions

Section 72

(1) Payment of a bill of exchange which falls due on legal holiday cannot be demanded until the next business day. So, too, all other proceedings relating to a bill of exchange, in particular presentment for acceptance and protest, can only be taken on a business day. (2) Where any of these proceedings must be taken within a certain limit of time the last day of which is a legal holiday, the limit of time is extended until the first business day which follows the expiration of that time. Intermediate holidays are included in computing limits of time.

Section 73

Legal or contractual limits of time do not include the day on which the period commences.

Section 74

No days of grace, whether legal or judicial, are permitted.

Part two
Promissory Note
Section 75

A promissory note contains: 1. The term “promissory note” inserted in the body of the instrument and expressed in the language employed in drawing up the instrument; 2. An unconditional promise to pay a determinate sum of money; 3. A statement of the time of payment; 4. A statement of the place where payment is to be made; 5. The name of the person to whom or to whose order payment is to be made; 6. A statement of the date and of the place where the promissory note is issued; 7. The signature of the maker.

Section 76

(1) An instrument in which any of the requirements mentioned in the preceding section are wanting is invalid as a promissory note except in the cases specified in the following paragraphs. (2) A promissory note in which the time of payment is not specified is deemed to be payable at sight. (3) In default of special mention, the place where the instrument is made is deemed to be the place of the domicile of the maker. (4) A promissory note which does not mention the place of its issue is deemed to have been made in the place mentioned beside the name of the maker.

Section 77

(1) The following provisions relating to bills of exchange apply to promissory notes so far as they are not inconsistent with the nature of these instruments, viz.: Endorsement (Section 11 - 20), Time of payment (Section 33 - 37), Payment (Section 38 - 42), Recourse in case of non-payment (Section 43 - 50, 52 - 54), Payment by intervention (Section 55, 59 - 63), Copies (Section 67 - 68), Alternations (Section 69), Holidays, computation of limits of time and prohibition of days of grace (Section 72, 73 - 74). (2) The following provisions are also applicable to a promissory

note: The provisions concerning a bill of exchange payable at the address of a third party or in a locality other than that of the domicile of the drawee (Section 4 and 27), stipulation of interest (Section 5), discrepancies as regards the sum payable (Section 6), the consequences of signature under the conditions mentioned in Section 7, the consequences of signature by a person who acts without authority or who exceeds his authority (Section 8) and provisions concerning a bill of exchange in blank (Section 10). (3) The following provisions are also applicable to a promissory note: provisions relating to guarantee by aval (Section 30 – 32), in the case provided for in Section 31, last paragraph, if the aval does not specify on whose behalf it has been given on behalf of the maker of the promissory note.

Section 78

(1) The maker of a promissory note is bound in the same manner as an acceptor of bill of exchange. (2) Promissory notes payable at a certain time after sight must be presented for the visa of the maker within the limits of time fixed by Section 23. The limit of time runs from the date of the visa signed by the maker on the note. The refusal of the maker to give his visa with the date thereon must be authenticated by a protest (Section 25), the date of which marks the commencement of the period of time after sight.

Part three

Supplementary Provisions

Title one

Protest and Some Other Acts

Section 79

Protest must be issued by a court, a notary public or a local national committee.

Section 80

Protest must contain:

1. the names of the persons for whom and against whom it is being made;

2. the information that the person against whom the protest is being made has been, to no avail, requested to act on the bill of exchange, or that the person could not be contacted, or that neither the premises where he does business nor his apartment could be located;
3. the information about the place and time when the request or the failed attempt at such a request has been made;
4. a note, in cases of acceptance or payment for honour, from whom, for whom and how the acceptance or the payment for honour was offered or made;
5. in the event that the drawee to whom the bill of exchange was presented for acceptance requests that it be presented to him again on the following day, a note about this fact;
6. a literal copy of the bill of exchange (copy) with all endorsements and a notes;
7. the signature of the protesting body and the official seal or the official stamp.

Section 81

If it is requested that acts on a bill of exchange are to be carried out by several persons or repeatedly by a single person, a single protest shall be sufficient.

Section 82

A bill of exchange may be paid into the hands of the protesting body. The authorization of the protesting body to accept the payment may not be excluded.

Section 83

(1) The protesting body is obliged to give up, in return for a reimbursement of expenses, the original of the protest to the holder of the bill of exchange or his authorized representative and, if requested, also its copy or its certified copy.(2) The body is likewise obliged to enter, on a day by day basis, the protests, in their entirety and ordered by dates and numbers, into a special book with individual pages marked with consecutive numbers. At any time, the body must issue, in return for a reimbursement of expenses, a copy of the entry in such a book to the parties or their legal assigns and successors.

Section 84

The party making the protest may, until the protest is issued, correct any misprints, omissions, and other defects in the protest. The corrections must be indicated as such and must be signed.

Section 85

Protests may only be made between nine a.m. and six p.m. In other times, the protest may be made only with the express approval of the person against whom the protest is being made; such an approval has to be marked in the protest.

Section 86

A note shall be made on the bill of exchange or the allonge of the fact that a protest has been made. The failure to make such a note shall not affect the validity of the protest.

Section 87

(1) The presentation of the bill of exchange for acceptance or payment, the drawing up of the protest, the request for a duplicate of the bill of exchange, as well as all other acts that a particular person must make, shall be made in the premises where he does business or, if there are no such premises or if they cannot be located, in his apartment. The acts may be performed in other places only with the consent of both parties; the consent shall be noted in the protest. (2) If the protest is marked with a note of the failure to locate either the premises where business is done or the apartment, the validity of the protest shall not be affected despite the fact that it would have been possible to locate either of them. (3) The provision of subsection 2 shall be valid without affecting the responsibility of the protesting body which has failed to carry out appropriate investigations. If a query with the record-keeping

authority does not yield any results, the protesting body is not obliged to carry out any further investigations.

Section 88

The acts which are to be performed in a certain location as specified on the bill of exchange may be performed in another location if the parties give their consent thereto when carrying out the particular act. If the performance of the act is to be certified in writing, the certification shall also include the consent.

Title two

Enrichment

Section 89

(1) The drawer or acceptant, whose liabilities arising from a bill have ceased due to expiry or because of failure to perform acts required for the maintenance of rights arising from a bill, are responsible to the holder only in the case of unjust enrichment. (2) The right to surrender enrichment expires in three years from the day of extinction of obligation arising from a bill. (3) Such a right does not exist against those endorsers, whose obligation arising from a bill has extinguished.

Title three

Lost and Damaged Bills and Protest Deeds

Section 90

(1) Lost or destroyed bills can be redeemed. (2) The protest, which has been lost or destroyed, can be replaced by an extract from the book of protests issued by a protesting body (Section 83 subsection 2).

Part four

Special Provisions of International Bill Law

Section 91

(1) The capacity of a person to bind himself by a bill of exchange or promissory note shall be determined by his national law. If this national law provides that the law of another country is competent in the matter, this latter law shall be applied. (2) A person who lacks capacity, according to the law specified in the preceding paragraph, is nevertheless bound, if his signature has been given in any territory in which according to the law in force there, he would have the requisite capacity.

Section 92

(1) The form of declarations on the bill of exchange or promissory note is regulated by the laws of the territory in which the declaration has been signed. (2) If, however the declarations on the bill of exchange or promissory note are not valid according to the provisions of the preceding paragraph, but are in conformity with the laws of the territory in which a subsequent declaration has been given, the circumstance that the previous declarations are irregular in form does not invalidate the subsequent declaration. (3)

Any declaration entered into abroad by a Czech citizen is applicable towards other Czech citizens as long as it complies with the formal requirements of the Czech law.

Section 93

(1) The effects of the obligations of the acceptor of a bill of exchange or maker of a promissory note are determined by the law of the place in which these instruments are payable. (2) The effects of the signature of the other parties liable of the bill of exchange or promissory note are determined by the law of the country in which is situated the place where the signature were affixed.

Section 94

The limits of time for exercise of rights of recourse shall be determined for all signatories by the law of the place where the bill of exchange or promissory note was created.

Section 95

The question whether there has been an assignment to the holder of the debt which has given rise to the issue of the instrument is determined by the law of the place where the instrument was issued.

Section 96

(1) The question whether acceptance may be restricted to part of the sum or whether the holder is bound to accept partial payment is governed by the law of the country in which the bill of exchange is payable. (2) The same rule governs the payment of promissory note.

Section 97

The form of protest and the limits of time for protest, as well as the form for the exercise or preservation of rights concerning bills of exchange or promissory notes, are regulated by the laws of the country in which the protest must be drawn up or the measures in question taken.

Section 98

The measures to be taken in case of the loss or theft of a bill of exchange or promissory note are determined by the law of the country in which the bill of exchange or promissory note is payable.

Article II and III, BECA, is only in the original (Czech) version available – see the attached CD.