

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

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.

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

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.

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.

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.