

Cover promissory note / Cover bill of exchange

Abstract

The diploma thesis focuses on the topic of a cover promissory note (also meant cover bill of exchange), currently referred to as a secured promissory note in practice and jurisprudence. The aim of the thesis is to provide a qualified answer to the question of whether the cover promissory note is of a secured nature or whether it is a consolidation instrument. This raises the further question of whether it is justified to call this instrument a secured promissory note. To achieve the aim of the thesis, the sub-features of the cover promissory note are analysed, which provide the basis for a qualified answer to the research question. The thesis is divided into eight chapters. A brief historical introduction in the first chapter serves to clarify the promissory note context. A significant contribution of this thesis is a comparison of the treatment of the domestic cover promissory note with the Anglo-Saxon cover promissory note, including an explanation of the differences in the acquisition of the promissory note. For background, the second chapter introduces the general promissory note concepts of the Anglo-Saxon promissory note law.

The law of the cover promissory note is a combination of the law of bills of exchange and the contract law. The abstractness of the cover promissory note is dealt with in the third chapter. In contrast to the cover promissory note abstractness are two features typical of general security for debt, accessory and subsidiarity. The core of the contract construction of the cover promissory note is the accessory, which is the subject of the fourth chapter. A pair feature accompanying the contract nature of the cover promissory note is subsidiarity, which is the subject of the fifth chapter. The insights from the previous chapters are further compared with general security and debt consolidation in chapter six, which focuses on the consolidating nature of the cover note. Chapter six provides the argumentation to answer the research question, i.e. that the cover promissory note is primarily a debt consolidation. The exceptions in which the cover promissory note is more of a security for debt are discussed in the seventh chapter. It is also argued that it is not appropriate to refer to the instrument of the cover promissory note as a security promissory note. Disputable situations arise when the substitute performance of the cover promissory note is exercised, and therefore the eighth chapter is devoted to the transfer of a cover promissory note. The eighth chapter includes an analysis of a current case about the independence of the cover promissory note, to which the findings of the previous chapters are applied. The conclusion encloses the most important results of this thesis.

Key words: cover promissory note, security promissory note, consolidation, security