Abstract

This paper deals with the phenomenon of the financial collateral arrangements, under which parties transfer book-entry securities. It focuses on the legal questions link to the international element. Financial collateral arrangements typically occur in securities repurchase and securities lending. These transactions play important role in order to guarantee liquidity cash and proper functioning of capital markets in the European Union. Simultaneously, securities are no longer only of a tangible goods nature; instead they exists as electronic records in securities accounts. This is why conflicts of law issues have become so paramount.

This study analyses the approach of Czech law to financial collateral arrangements. In particular, if the collateral is represented by a book-entry share, bond or fund unit. It pays attention to such a matter from the national as well as the harmonised EU perspective. On an EU level, such arrangements are primarily regulated by the Collateral Directive (FCAD). The Hague Convection on the Law Applicable to Certain Rights in Respect of Securities held with Intermediaries, which has had a profound impact on the notion of book-entry securities conflicts of law rules, is specifically discussed too.

Both methods to provide financial collateral, i.e. the outright transfer and the pledge combined with a right of disposal for the secured party, are examined. The methods are questioned against fundamental conflicts of law rules which answer the issue which law governs legal status, proprietary effects and rights and obligations of the underlying contract if a dematerialised share, a bond or a fund unit is subject of the financial collateral. In this context, the paper also examines the approach of the Czech legal system to *lex fori* in respect of the financial collateral arrangements.