

Bill Of Exchange - A Modern And Efficient Instrument Of Payment Within The Commercial Relations

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Abstract: The mechanism of payment and compensation is an important component of the monetary system and financial infrastructure of the economy, ensuring the cash flow and the transfer of monetary assets. Due to the development of the trade and the economic modernization the payment in scriptural money (currency account) was imposed in the internal and international transactions, the circuit of payment instruments and credit (bills of exchange, checks, promissory notes) amplified and, recently, the electronic payment became functional by using bank cards and computerization of settlement systems, which have contributed to ensuring payment in real time, reducing the risks and costs of funds transfer.

Keywords: instruments of payment, monetary assets, bill of exchange, international commerce, fiduciary currency, transaction settlement

JEL Classification: F33, G23, K22

INTRODUCTION

Making a payment in the international transactions involves the use of some tools and instruments that ensure the settlement of the debt contracted and marks the completion of the economic transactions. Besides the traditional means of payment as the divisional currency (spare money) and fiduciary currency (bank notes or promissory notes), the business operators have a variety of methods to make payments and the choice to choose the payment instrument which meets their needs, from the perspective of the execution speed, transaction costs and the legal framework governing the payment obligations.

In the foreign exchange and financial field of the banks participating in the international settlements conventions payments are concluded and they provide payment instruments, rules governing the conduct of payments and the system of law applicable (in principle, it is used the law of the land where the paying bank has its origin)¹. The increasing volume of the transactions and the growth of the financial intermediation led to the transition from the bilateral settlement of transactions between the banks through the correspondent accounts system, to the establishment of clearing houses with net settlement.²

NOTION AND FEATURES

The payment by bills of exchange is among the oldest techniques of payment, providing a high degree of security involved. The bills of exchange have emerged as a necessity imposed by the needs of the existence of a legal instrument by means of which could be effectively carried out the exchange, since this was originally a currency exchange.

The bill of exchange³ is a document by which a person called the issuer, instructs another person

¹ Stanciu D. Cărpenaru, *Romanian Commercial Law Treaty*, Universul Juridic Publishing House, Bucharest, 2014, p. 629.

² The first clearing houses appeared in England in 1760, then after 20 years they also emerged in the USA, France, Italy, Germany. During the modern period the multinational clearing houses appeared and recently automatic clearing houses which, by computer technology, have seriously reduced the settlement period of time.

³ The notion of exchange/cambia comes from the Italian word *cambio* which means exchange. In the Italian legal system it is used the concept of *cambiale tratta* or only *tratta*. In the French law it is used the expression "*lettre de change*" meaning letter of change. In the old Romanian trade Code the bill of exchange was called *trata* or *policy*.

called the debtor, to pay at maturity and at an established place a sum of money to a third person, named the beneficiary, or at the order of the latter. As it comes out from the definition, the bill involves three persons. The issuer is the person issuing the title and instructing about the payment of a certain amount of money. By his signature, the issuer undertakes to pay the amount of money to the beneficiary by the debtor.

The issuer of the document is called the issuer as it "issues" the title for the debtor who is obliged to make the payment. The debtor is the person who is instructed to pay a sum of money, and the beneficiary is the person to whom the payment will be made.

LEGAL REGULATION

The bill of exchange is one of the credit instruments with a wide applicability in trade business, especially in the international relations and it is the subject of a unitary legal regulation represented by the convention related to the uniform law of bills of exchange and promissory notes in Geneva in 1930⁴.

The Romanian bill of exchange legislation has the main roots in the Law no.58 / 1934 on bills of exchange and promissory notes and Law No.59 / 1934 law of the cheque. Consequently, after our country's return to the market economy, the National Bank of Romania has developed secondary regulations, in order to guide commercial banks activity with reference to the trade effects⁵.

Most countries have encoded laws related to bills of exchange that have followed the rules agreed by the Geneva Conventions, in order to standardize the control of the exchange bills.

The UN Convention, currently in force, was adopted by the General Assembly of the United Nations on the basis of the recommendation of the sixth committee on 9th of December 1988 and includes a set of modern and detailed rules, relating to the international operations on bills of exchange and international promissory notes, establishing the legal framework and structures of the international bills of exchange (in their case the place where the bill of exchange was issued and the location details of the payment should be specified, this can only be located in a state which is party to the Convention).

In time there were attempts to unify legislations of different countries regarding the payment instruments. However, three major legal systems are used after Geneva unification of bills of exchange and promissory note regimes: the Anglo-Saxon system, the German and French system. Not being a part of the Geneva Conventions, the Anglo-Saxon countries have entirely maintained their legal regime regarding the credit instruments. Regarding the French and German system, although these countries joined the Convention of Geneva, they are still different, either by the stocks listed in Annexes to the Convention referring to uniform law on bills of exchange, either by a different interpretation of some texts from the uniform law. The fundamental differences between the German system and the French law of the trade mainly concern the provision and the rights of the holder in the event of revocation of the bills of exchange proceedings or its prescription. In English law, as well as in the German one the commitment of the bill of exchange is independent of the contracts in which it is included and the signatory is only bound on the signature put on the title.

The bill may be considered as one of the finest species of credit instruments having created its own system of specific legal rules called bills of exchange law.

The bill of exchange law separated from the private law and became an autonomous law containing both procedural and substantive law of commercial and civil nature, as well as references to public law. The scope of the bill of exchange law is strictly limited by the validity of the promissory note and of the bill of exchange obligation⁶ and the autonomy is manifested by its priority and exclusivity of its incidence to common law, the Code of civil procedure. Besides the common features of all the commercial securities⁷, the bill of exchange has some specific features of its own.

Therefore, the bill is a credit instrument that gives the legal holder the right to receive the amount of

⁴ Although Romania did not join this convention, most of the provisions of the uniform law have been taken over into Romanian law, which used as a model the Italian law on bills of exchange and promissory notes from 14th of December 1933.

⁵ Technical Rule No.4 / 2009 published in the Official Gazette, Part I, no.114 of 25th of February 2009 related to the trade of the banking companies and the other credit institutions with bills of exchange, promissory notes and checks as well as rules on the circulation, technical standards and content of these credit instruments

⁶ Radu Economu, *Bill of exchange law handbook*, Lumina Lex Publishing House, Bucharest, 1996, p.8.

⁷ The concept of "securities" belongs to the German law and that of "credit instrument" is used in the Neo-Latin law.

money referred to in its content. The payment becomes payable after the expiry of a period from the date of issue of the bill of exchange and, because of that, by the bill of exchange a credit operation is performed. The due date is unique for all the obligations arising from the bill of exchange. The instruction of the issuer given to the debtor involves the payment of a sum of money, so that the obligation of the bill of exchange may relate solely to the payment of the specified amount of money, without any other performance.

The bill of exchange represents a complete title, the law and the corresponding obligation being contained in the document. In the absence of a key specification in the title, the use of its external elements is excluded, even if the bill of exchange would mention them. This interdiction comes from the literalness of the bill of exchange based on the formalism of the commercial securities.

The bill of exchange is a promissory note and the right contained therein may be exercised by the beneficiary or by the person to whom he has submitted the bill of exchange by endorsement. The provision "promissory" is implicit in any bill of exchange, the issuer authorizing its possessor to transfer it to another person whenever he pleases. The law also allows the transfer of the bill of exchange by common law of the assignment of debt. In this respect, within the bill of exchange must be specified "not promissory".

The bill of exchange is an abstract title and the rights and obligations arising from the bill of exchange exist validly, independent of the legal cause which generated them. The obligations under the bill of exchange can not be subordinated to a condition or to a counterperformance of the bills of exchange's owner, as the undermining safety of the bill of exchange circulation would affect the very existence of the bill of exchange obligation, therefore the law provides for the nullity of the bill of exchange in case the payment order of the debtor is conditional.

FUNCTIONS OF THE BILL OF EXCHANGE

The doctrine⁸ of the commercial law considers that the bill of exchange functions are the following: exchange instrument, credit instrument and payment instrument, their role is relevant to the needs of the commercial activity. The main function of the bill is that of credit instrument. Taking into account the fact that the amount of money stipulated in the bill does not have to be paid immediately, but within a specific time, via the bill a credit is given to the debtor until the due date. The bill of exchange has the function of a payment instrument, meaning that a person who has several bills payable in a determined town could make payments instead of making use of cash.

THE CONDITIONS REQUIRED FOR THE VALIDITY OF THE BILL OF EXCHANGE

The issuance and circulation of the bill of exchange involve certain legal relations arising between the issuer, debtor, beneficiary, endorser and endorsee's expression of will. In order to produce legal effects, to give rise to legal documents, the will of those respective people should act according to the law. In order to exist and to be effective, the bill must meet the form required by law, a condition that is a guarantee in trade relations, ensuring the creditor of the bill of exchange of the opportunity to carry out his bill of exchange simply and effectively⁹.

The bill of exchange is a document under private signature, having the form of a letter written for the debtor by the issuer, written by hand or printed (printed forms)¹⁰, in all cases, the signature being written by hand. The document representing the bill of exchange must contain: the name of the bill of exchange, the unconditional payment order, the name of the debtor, an indication of the due date, the place where payment must be made, the date and place of the bill of exchange issue and the signature of the bill of exchange issuer.

In compliance with the law, the document must contain the name of "bill of exchange", expressed in the language used for drafting the document, "the title text itself" requirement meant to draw attention to the one signing for the obligation that he undertakes and its effects. The document must contain the

⁸ Stanciu D. Cârpenaru, *Romanian Commercial Law Treaty*, Universul Juridic Publishing House, Bucharest, 2014, p.633.

⁹ Radu Economu, *work read*, p.9.

¹⁰ The document can also be in its authentic form –Technical Rule 4/2009 related to the blills of exchange and the promissory notes.

order that the issuer gives to the debtor to pay to the beneficiary a certain amount of money. The law requires that the document provides the name of the person that has to make the payment, which is, the name of the debtor (name and surname of the individual or, where applicable, the name of the legal entity). In case of not mentioning the debtor, the bill of exchange becomes invalid.

According to the law, the document must indicate the maturity date, that is, the date when the payment becomes due and the holder could request the payment of the amount of money mentioned in the document. However, the document should provide the place where the debtor will have to pay; in the bill of exchange must be specified the person who will pay or will order the payment to be made.

The bill of exchange is a payment order, with a mandatory role and a tool that does not comply with this requirement is not a bill of exchange. Also, this titles should be unconditional and to expressly indicate the name of the debtor. A bill may apply to more debtors who can be held or not partners, but such a title for two debtors successively or alternately will not be considered as a bill of exchange.

A bill of exchange is not invalid on the ground that it is not dated, the value is not specified, or does not indicate where it is written or where it is paid.

The reimbursement period is the period of time after which a bill of exchange becomes due. Thus, if such an instrument is payable 90 days after the date of issue or acceptance, the deadline shall be of 90 days.

If the issuer and the debtor are one and the same person or if the debtor is a fictional or incompetent person, the title holder can consider it either a bill of exchange or a promissory note, according to his interests. In case a bill of exchange contains words prohibiting the transfer or indicating an intention that it should not be transferable, it is valid between the parties but it is not negotiable. A negotiable bill of exchange may be payable by a promissory note or by the debtor himself.

PAYMENT OF THE BILL OF EXCHANGE

In order to pay the amount of money provided in the title, the bill of exchange must be presented for payment, since this is the only way it can be paid and because it is an indispensable condition in order manage validly the protest, namely a requirement that must be satisfied prior to any request for summons.

The legitimate holder of the title is entitled to the presentation of the bill of exchange and the right of payment and he can be the beneficiary indicated by the issuer in the bill of exchange or the endorsee that legitimates himself through an uninterrupted string of endorsements under the law.¹¹

The bill of exchange payment may be required, first, from the accepting debtor, which is the main debtor of the bill. The bills shall be presented to the debtor for payment, even if he refused the acceptance because the refusal of the acceptance does not exclude the right of the debtor to pay the bill.

The payment of the bill of exchange may be required to maturity, which can be determined by issuing the title (maturity at a fixed date or within a certain period from the date of issue) or can be determined later by the owner of the bill (maturity date on demand or at a certain term from the demand).

The bill of exchange must be presented for payment at the place and address indicated in the title; the place of payment is the place mentioned in the bill or, if not indicated, placed next to the name indicated the debtor. The debtor who pays the bill of change can claim it to be handed to him with the specification of payment written by the owner on the title, in this case the proof of payment may be submitted by the debtor with bill of exchange signed by the holder of the bill, which was submitted after payment.

REFUSAL OF PAYMENT

In case the bill of exchange is refused at payment, the holder of the bill of exchange who has not received the amount of money provided in the bill can obtain it by means related to the bill of exchange, actions governed by the common law.

According to the law, the means related to the bill of exchange represent procedures of

¹¹ Stanciu D. Cărpenu, *Romanian Commercial Law Treaty*, Universul Juridic Publishing House, Bucharest, 2014, p.658.

reevaluation of the bill of exchange rights arising from the principles underlying the bill. The bill of exchange actions are of two kinds: direct and of regression, the difference between them consisting in the categories of those bound to the bill of exchange, those bound directly or primarily and indirectly or of regression.

THE RIGHT TO SUE FOR COMPENSATION

In compliance with art. 53 of Law no. 58/1934, the bill of exchange holder may request on the path of suing for compensation the amount mentioned in the bill and the stipulated interest, the legal interest calculated from the due date as well as the payment of the protest, notification and other incurred expenses. It consists in the obligation to pay when the main bound individual fail to fulfil his duty. If the debtor fails to make the payment by the due date the holder can track those bound to the bill of exchange, that is the debtor and the endorsers who are forced by the right to sue for compensation, the action against them being that of suing for compensation related to the bill of exchange.

The refusal to pay means, among other things, failure to pay the bill of exchange if the acceptance was refused in whole or in part, in case of bankruptcy of the debtor, even when the cessation of payment is due to the fact that the tracking of the debtor's goods had no result, even if it has not been done on the basis of a court order, and in case of the bill of exchange debtor's bankruptcy¹².

The right to sue for compensation will be exercised at maturity after the title was presented to the debtor and he did not pay. If there is an unreasonable refusal for which the payment has not been made, then, the right to sue for compensation cannot be exercised. If the payment offered by intervention was refused the right to sue for compensation can not be exercised against the debtors for whom the payment was offered.

In case of a regress action before the due date or there are facts which emerge before the maturity that lead to the probability payment failure then the tracking of the debtors can be made before the maturity. In order for a regress action to be exercised before the due date there should be a total or partial refusal to accept payment.

The refusal to accept is not established by a declaration to refuse acceptance, but it must be based formally by protest. In case where the title was presented and the acceptance was refused, this not being established by protest, the owner has the opportunity to make another new presentation with the same purpose, if he fits in the submission deadline. In order for the regress action to be exercised the following formal requirements need to be met: presenting the bill of exchange for payment, the protest and the notification.

ENFORCEMENT OF THE BILL OF EXCHANGE

According to the law, to assert the rights of the bill of exchange, the holder of the promissory note may use, in addition to direct action or regress action the immediate enforcement path of the bill of exchange, a simplified procedure which is faster and less expensive, avoiding the lawsuit. On the enforcement path of the bill of exchange the holder of the bill of exchange moves directly to enforcement under the bill of exchange, this is equivalent to an enforceable title.

The enforcement of the bill of exchange is done according to the law on the debtors of the bill of exchange, by the holder of the bill of exchange who may be the beneficiary or its last endorsee, but also on the regression debtors who paid the bill of exchange.

The court procedural measures and enforcement actions taken by the legislature to ensure the fulfillment of trade obligations are much more stringent in the bill of exchange law to lead faster and safer to the achievements of the rights arising from the title.

The bill of exchange enforcement procedure established by law no. 58/1934 and no.59 / 1934 with the subsequent amendments, required precondition investiture of enforceability of the bills of exchange, promissory notes or checks, also preserved by the regulations currently applicable.

¹²Stanciu D. Cărpenu, *Romanian Commercial Law Treaty*, Universul Juridic Publishing House, Bucharest, 2014, p.661.

The legislature considered useful the enforcement of the bills of exchange, promissory notes or check redereed enforceable, although these documents have enforceable titles, to enable the court to examine the conditions of their formal validity. Only by rendering them enforceable the bill of exchange, the promissory note and the check actually become enforceable titles for the amount written on them and for the accessories determined in accordance with the applicable law.

CONCLUSIONS

One of the modern juridical forms of goods circulation is the titles circulation , which incorporates certain monetary values. These values circulate through the transmission of the titles which they represent, titles such as: stocks and bonds issued by the joint –stock companies, the bill, promissory note, bill of lading etc.

The institutionalization of the circulation of securities is one of the most important contributions of commercial progress in the modern commercial activity .

In relation to the practice courts , the bill is used in domestic and international transactions of the subjects of the basic relations with or without a foreign element being a credit instrument , in perspective which gives originality and autonomy to the debt right incorporated into the title , a situation which facilitates its use instead of pecuniary instruments.

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