

LEGAL REGULATIONS REGARDING THE BILL OF EXCHANGE

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REVIEW, RESEARCH ARTICLE

Abstract

The bill of exchange is a trade effect, representing a short-term credit security, whereby the issuer, as the debtor, undertakes to pay unconditionally or to order the payment of a sum of money to the creditor, as the holder or at his order, on a certain date or at the submission of the document. [1] the paper on bills of exchange in commercial law explores a crucial aspect of financial and commercial infrastructure, highlighting the role and importance of this instrument in facilitating and securing commercial transactions. A bill of exchange is defined as a transferable security which gives its holder the right to claim payment of a sum of money on a specified date and place. In the paper, we investigated the history of bill of exchange and its evolution in the context of the business environment, from its origins in antiquity to the present day. We have also looked at the legal aspects and regulations governing the use of bill of exchange. We have examined the details of the issuance, movement, acceptance and payment of bills of exchange, as well as the responsibilities of the parties involved in a commercial transaction involving the use of this instrument. During the report, I stressed the importance of rigorous compliance with the legal and commercial rules and procedures associated with bills of exchange, in order to avoid potential difficulties and litigation. We highlighted the need for an adequate understanding of the mechanisms and implications of the use of bills of exchange, both for legal professionals and for actors involved in commercial transactions. It is stressed that trade bills remain an essential and valuable financial instrument in today's business environment, helping to build trust and stability in trade transactions, both locally and internationally.

Keywords: law, bill of exchange, shooter, payee, payment

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INTRODUCTION

Payment using bills of exchange is among the oldest payment techniques, offering a high degree of security to the parties involved. The determinants that led to the creation of the bill of exchange were:

- (a) the high density of coins;
- (b) uncertainty of transport;
- c) prohibition of capital export. [2]

The issue, circulation, exchange negotiations are related both to the activity in the field of international exchange relays and to a series of non-commercial operations, executed by natural or legal persons. [2]

The bill of exchange is one of the oldest payment instruments used in domestic and international commercial activity, which in various forms and with some functional changes is still used today. Historically, bill of exchange appeared in China from 500 to 600, then expanded to Italy. Trade between the far East and Europe was mediated by Arabs and Italians, and bills of exchange became an international payment instrument for traders. The improvement of the bill of exchange led to

the appearance of the paper bill in 1600, which is basically still a cambie, but a bank bill. In our country, the first written information about the trade effects dates from the beginning of the 18th century, the bill of exchange being called "the police". Internationally, bills of exchange are governed by the "Convention containing the uniform Law on bills of exchange and promissory notes" and the "Convention intended to regulate certain conflicts of law in matters of bills of exchange and promissory notes", both of 7 June 1930 in Geneva. In our country, the bill of exchange is regulated by Law no. 58/1934 on bills of exchange and promissory note, amended by Law no. 83/1994 and by some regulations and norms issued by the National Bank of Romania.[3]

The term cambie comes from an Italian word, cambio, which means exchange. This appears normal, as Italy was at that time the country with the most developed commercial activity and the place where the first commercial banks appeared.[3]

Due to its widespread use in international trade relations, the bill of exchange was subject to a unitary legal regulation. In 1930, the

convention on uniform law of bills of exchange and promissory notes was concluded in Geneva. [4]

Although Romania did not accede to this convention, most provisions of the uniform law were taken over in the Romanian law. Indeed, Act No 58 of 1 May 1934 on bills of exchange and promissory notes' used as a model the Italian law on bills of exchange and promissory notes of 14 December 1933, which was based on the uniform law on bills of exchange and promissory notes. [4]

In the context of the formation of the market economy in our country, some measures have been taken on the use of bill of exchange in domestic trade relations. [4]

Thus, by O.G. no. 11/1993 there were brought some amendments and additions to the Law no. 58/1934 on the bill of exchange and the promissory note. Certain amendments and additions were meant to return to the original form of the legal regulation. [4]

Then, the National Bank of Romania issued certain framework rules on trade by banking companies and other credit institutions with bills of exchange, promissory notes and checks, as well as technical rules on bills of exchange and promissory notes, according to current international custom. Finally, the National Bank has regulated an information system meant to strengthen the security of the bill of exchange, promissory note and check credit by creating the central payment incidents. [4]

Law no. 58/1934 was amended and supplemented by Government Ordinance no. 39/2008, approved with amendments and completions by Law no. 163/2009 and Law no. 76/2012. [4]

The main regulation of bills of exchange is Law no. 58/1934 on bills of exchange and promissory notes. Law No. 58/1934 does not include the definition of bill of exchange. In the science of commercial law, a bill of exchange is defined as a document by which a person, called a shooter or issuer, orders another person, called a draw, to pay a sum of money on maturity to a third person, called a beneficiary, or at his order. From the above definition it follows that the existence of the bill of exchange involves three participants: The shooter (the issuer), the drawer and the beneficiary. The shooter or issuer of the bill of exchange is the one who issues the title and orders the drawer to pay a sum of money to the beneficiary of the bill of exchange. The issuer of the document is called the shooter because it "draws" the title on

the debtor who is obliged to make the payment. The drawee is the main duty of the bill of exchange, in which quality must pay the amount of money. The beneficiary is the person who, upon maturity, will collect the amount of money from the draw. [5]

A security, a bill of exchange has the characters that are common to commercial securities. In addition to these general characters, the bill of exchange has its own characters, namely:

- **The bill of exchange is a credit title**

A bill of exchange is a document that gives the legitimate holder the right to receive the amount of money mentioned in it. The payment ordered by the shooter becomes chargeable after the leak of a

term from the date of issue of the bill of exchange. Thanks to this, a credit operation is performed through cambie. The maturity is unique for all bills of exchange liabilities resulting from bills of exchange. [6]

- **The bill of exchange has as its object the payment of a sum of money**

The order of the shooter given to the draw concerns the payment of a sum of money. The bill-of-exchange obligation may have as its object only the payment of a sum of money, excluding any other benefit.

All bills of exchange shall have as their object the payment of the same amount of money, which the shooter mentioned in the bill of exchange, unless otherwise provided by law. [6]

- **Bill of exchange is a full title**

The right and the obligation are those contained in the document. In the absence of an essential mention in the writing, the use of external elements is exclusive, even if the reference to them would be made in the bill of exchange. This prohibition stems from the literal character of the bill based on the formalism of commercial securities. [6]

- **Bill of exchange is a title to order**

The right contained in the bill of exchange may be exercised by the beneficiary or by the person to whom the bill of exchange has been transmitted by gir. The "to order" clause is subunderstood in any bill of exchange.

The issuer of the bill of exchange authorizes its holder to transmit it to another person at any time and indefinitely. The bill of exchange can be transmitted by the common law of the assignment of debt. For this purpose, the words 'not to order' must be made in the bill of exchange. [6]

- **Bill of exchange is an abstract title**

The rights and obligations arising from the bill of exchange exist validly, independently of the legal cause that generated them, respectively of the fundamental relationships. From the time of issue, bills of exchange and bills of exchange and bills of exchange have a stand-alone existence. The bill emancipates itself entirely from the legal cause from which it was born, and the rights and duties of the bill are analyzed in themselves, without any reference to the fundamental relations. [6]

- **The bill creates autonomous obligations**

All obligations arising from the bill of exchange have a legal existence of their own. Each signature put on the title creates a separate legal relationship with its own regime, and the defects or shortcomings of a legal relationship do not affect the validity of the other legal relationships. If the beneficiary transmits the bill by gir, he assumes a valid obligation toward the acquirer (the guarantor), even if his right was affected by the vices. If a person (the avalist) guarantees the obligation of the accepting tracer, the obligation of guarantee (ancillary obligation) is valid, even if the obligation of the drawee (main obligation) is nullible for defects of consent or incapacity. The recognition of the validity of the bills of exchange obligations is based on the existence of a bill of exchange issued in compliance with the requirements of the law. [6]

- **The bill creates unconditional obligations**

The bill of exchange obligations may not be subject to a condition or consideration by the holder of the bill of exchange. The provision of a condition affects the very existence of the bill of exchange obligation. If the payment order of the carriage is conditional, the bill of exchange is null. [6]

- **The bill creates solidarity obligations**

By transmitting the bill by the proxy, the initial obligation of the shooter regarding the acceptance and payment of the bill of exchange by the Tras is added the successive obligations assumed by his own signature, by each transmitter (guarantor) toward the acquirer (giratee).

The Gir not only carries out the transmission of the bill of exchange, but also the guarantee of the successive acquirers of the bill of exchange. In this case, each signatory of the bill of exchange undertakes to accept and pay the bill of exchange upon maturity. The bills of

exchange born from the signing of the bill of exchange are solidary, that is, upon maturity, the last holder of the bill of exchange may demand payment of the amount of money provided in the bill of exchange from the draw, and in case of refusal from any of the other signatories of the bill of exchange, without a predetermined order. [6]

The bill of exchange is a **full and formal order**, incorporating an abstract, autonomous and unconditional obligation to pay a sum of money by the signatories of the bill of exchange, held jointly and severally for the performance of the obligation. [6]

MATERIAL AND METHOD

The materials used in writing this paper are composed of legislation and web sites. The methods used are legal, namely the formal method, the comparative method, the logical and sociological method, the analytical method. The use of these methods has the role of performing a systematic analysis of the information from the studied sources in order to elaborate the points of view and the conclusions.

RESULTS AND DISCUSSIONS

According to Article 1 of Law no. 58 of 1 May 1934 on Bill of exchange and promissory note, the bill of exchange must include:

1. The name of the bill of exchange entered into the text of the title itself and expressed in the language used for the writing of this title.
2. Unconditional order to pay a specified amount.
3. The name of the one who is to pay (tras).
4. Showing the maturity.
5. Showing the place where the payment is to be made.
6. The name of the person to whom or at whose order payment is to be made.
7. Showing the date and place of issue.
8. The signature of the one issuing the bill (shooter). [6]

According to Article 2 of the same law, the title which lacks any of the conditions mentioned in the preceding article shall not be of the value of a bill of exchange, except in the cases indicated in the following paragraphs: The bill of exchange without showing the maturity shall be deemed payable on spot. In the absence of a special appearance, the place

shown next to the name of the drawee shall be considered as the place of payment and, at the same time, the place of domicile of the drawee. The bill of exchange which does not show the place where it was issued shall be counted as signed at the place shown next to the name of the shooter. If more than one place of payment is shown on the bill of exchange, the holder of the bill of exchange may present it for acceptance or payment at any of these places. [6]

The bill of exchange has a formal character. This character must be understood in two ways: The bill of exchange must take the written form and the document must contain the particulars prescribed by law. The bill of exchange is a private signature written with the configuration of a letter drawn up by the shooter and addressed to the trucker. Bill of exchange can be written in any language, whether the persons involved know this language or not. A bill of exchange can be handwritten, beaten to the car, or printed. The standard forms are also accepted, which are completed in the blank spaces. In all cases the signature must be mauwritten, that is, it must belong to the person signing. [4]

Mandatory bill of exchange notices:

1. **The name of cambie.** This requirement is intended to draw the attention of the signing party to the nature of the obligation and its effects. Since the law requires that the inscription be included in the inscription, it means that equivalent expressions are not allowed. Consequently, the notions of "trate" or "policy" that were used by previous regulations could not be used, even if in the past they were widely known. The name of the bill of exchange must be expressed in the language used to write the document. [4]

2. **The unconditional payment order of a specified amount of money.** The document must flow the order that the shooter gives to the drawee to pay the beneficiary a specified amount of money. The payment order must be expressed in the form of an order itself ("pay", "you will pay", etc.) or in another "more polite" form, "I authorize you to pay", etc. The order must be **clear and precise**. The order must be **unconditional**. Any condition or consideration affecting the payment order shall result in the nullity of the bill of exchange. The payment must have an object only a sum of money and in a determined amount, the type of currency must be specified (without this specification the bill is struck by nullity). [4]

3. **The name of the drawee,** that is, the name of the person who must execute the payment. The name and surname of the natural person must be clearly stated, namely the denimation of the legal person or the obligating entity. The law requires the indication in the bill of exchange of the carriage code, respectively of the unique identification number provided in the identification or registration documents of the carriage. In case of no indication of the carriage, the carriage is struck by nullity.

It must be noted that the indication of a person as a tras does not thereby create an obligation for the person concerned to pay the sum of money. This obligation arises with the acceptance of the bill of exchange. From the moment of acceptance of the bill of exchange, the drawee becomes bound as the principal debtor of the bill of exchange. [4]

4. **Indication of the term.** The document must indicate the maturity, i.e. the date on which the bill of exchange obligation becomes chargeable and the holder of the bill of exchange may request payment of the amount of money mentioned in the document. Only the payment on maturity has liberating effect for the debtor. The maturity must be certain, that is, it must show the day or the maximum period within which the holder of the bill of exchange will present himself for payment. Then the maturity must be unique; the law prohibits the exchange with payment in installments. The maturity must result from the registration.

Can be drawn: In sight. at a certain time from sight; at a certain time from the date of issue; on a fixed day.

- If the maturity is missing, the bill of exchange is considered payable "at sight", that is, at its presentation. The maturity at sight allows the payment of the bill of exchange to be made "on presentation", or "on demand", according to the interests of the holder of the bill of exchange. 'Spot' bills of exchange may be presented for payment 'on the day of issue and at the latest one year after issue'.
- Maturity at a certain time of sight. This maturity allows the holder of the bill of exchange to present the bill of exchange for payment on the date he wishes. In this case, the maturity will be at the expiration of the term provided in the bill of exchange, which runs from the day of presentation of the bill of

exchange from the holder to the draw; for example: 30 days after the presentation of the bill.

- The issue at a certain time from the date of the broadcast. The maturity will be upon the expiry of the term stipulated in the bill of exchange, which runs from the date of issue of the title; for example, 15 days from the date of issue.
- It's on a fixed day. The obligation is subject to an indication of a specific day, for example 1 October 2010. [4]

5. **Indication** of the place where payment is to be made. The enrolment must provide the place where the debtor (draft) will make the payment. In the bill of exchange must be shown only the locality, and not the domicile or seat of the debtor. In the absence of an indication of the place where the payment is to be made, the payment is made at the place shown next to the name of the draw, which is also considered the place of residence of the draw.

By a special clause it may be stipulated in the bill of exchange that the payment be made at the domicile of a third party. A bill of exchange comprising such a clause is called domiciled bill of exchange. [4]

6. The name of the person to whom or on whose order the payment will be made. The person to whom the payment will be made or the payment must be made must be shown. Cambodia is drawn in favour of a determined person who is a beneficiary of the bill of exchange. The beneficiary is the first legitimate holder of the bill of exchange and, in this capacity, he has the right to claim from the draw the payment of the amount of money provided in the bill of exchange. The shooter may indicate himself as the beneficiary. If the beneficiary is not indicated when the title is issued, but subsequently is a bill of exchange in white. [4]

7. **Date and place** of issue of the bill of exchange. The date is indicated by the day, month and year of issuance of the bill of exchange, it is unique, even if there were several shooters. The registration must contain the city of issuance of the bill of exchange. If the place of issue of the bill of exchange is not indicated, the law shall presume that the place of issue shown next to the signature of the shooter. If such a place is not mentioned, the bill of exchange is struck by nullity. [4]

8. **Shooter's signature.** In order to produce effects, the bill of exchange must be signed by the shooter, otherwise the bill of exchange is struck by nullity. [4]

Optional mentions of bill of exchange.

I. Clauses affecting the debt obligation.

a) Clause "nu to order". This clause has the effect of prohibiting the transmission of bill of exchange by gir. The bill of exchange shall be transmissible only in the form and with the effects of a debt assignment under common law.

b) Indication of an acceptant if necessary. In order to avoid the risk of refusal of acceptance or payment of the bill of exchange by the shooter, the shooter may indicate in the bill of exchange a person who, if necessary, accept or make payment of the bill of exchange. The clause shall take effect only in case of refusal of payment by the draw.

c) Order of presentation of the bill of exchange upon acceptance. The presentation of the bill of exchange for its acceptance by the shooter is mandatory.

d) Clause „without expenses” or „without protest”. This clause exempts the beneficiary of the bill of exchange from the obligation to exercise the protest of non-acceptance or non-payment, which is required for the exercise of the regression action. [4]

II. Clauses that have no effect on the debt obligation

a) Clause „after opinion”. The shooter notifies the shooter not to accept or not to pay until after receiving an opinion from the shooter.

b) Clause „without proxy”. This clause confirms that the holder of the bill of exchange claims the amount mentioned in the title in the virtue of his right. The clause has no special effect, since the bill of exchange is a promissory note and therefore the execution of the obligation is made at the request of the legitimate holder of the title, who values a right of his own.

c) Clause „value given in warranty”. The clause shows the cause of the transmission of the title, but has no effect.

d) Clause „documents against acceptance”. The clause is used in particular in international trade where the case circulates accompanied by representative documents of the goods sold. The Cambodian containing such a clause is called documentary bill of exchange. The role of the mention is to show that the documents are only handed over to the shooter if he accepts or pays the bill of exchange. [4]

Consequences of non-compliance with the form conditions of the bill of exchange:

According to Article 2 of the Act, the title which lacks any of the conditions set out in

Article 1 does not have the value of a bill of exchange. There are certain exceptions: the bill of exchange without showing maturity is considered payable in plain sight. In the absence of a special mention, the place shown next to the name of the draw is considered the place of payment and at the same time the place of residence of the draw. The bill of exchange which does not show the place where it was issued shall be deemed signed in the place shown next to the name of the shooter. [4]

Acceptance of bill of exchange:

It implies the unconditional agreement of the draw to pay at maturity the amount written in the bill of exchange. Acceptance of the bill of exchange must be written, either on the face or on the reverse, and must bear the signature of the consignment. If acceptance is made on the face of the title is sufficient the signature of the draw, otherwise it must be accompanied by the accepted word or one of the expressions „you pay” or „you honor”. [8]

The presentation of the bill of exchange for acceptance is optional, if there is no express indication to the contrary. The shooter may or may not set a binding deadline for submission of the bill of exchange upon acceptance. Cambodia presents itself for acceptance at the home of the shoot, usually. The presentation for acceptance is mandatory if the bill of exchange is payable at a certain time from sight, because from the date of presentation to acceptance the deadline for maturity begins to run. Bill of exchange paid at a certain time from sight must be submitted for acceptance within one year from the date of its issuance, the shooter may reduce or extend this term by express mentions in the text. The trace is not obliged to accept the bill of exchange, but from the moment of acceptance of the bill of exchange, it becomes the main debtor, and the guarantors and the shooter remain obliged only if the draw does not pay the bill of exchange at maturity, which means they remain bound in regression. [8]

Refusal to accept bill of exchange:

Refusal to accept or pay must be ascertained by an authentic act (protest of non-acceptance or non-payment). [9]

The protest of non-acceptance or non-payment is made by the bailiff or the notary public. In case of refusal of acceptance of the bill of exchange, the holder of the bill of exchange may exercise, even before maturity, the right of regression. [4]

Consequences of the default of the Cambodian default. Bill of exchange actions. Extra-family actions.

If the bill of exchange is refused payment, its legitimate holder may use its rights by the means of bill of exchange means or extra-bill of exchange means:

- the bill of exchange means are genuine bill of exchange actions of which are part direct actions, regression actions and bill of exchange execution.

- extra-bill of exchange means are the actions specific to the fundamental relations of the common law that determined the issuance of the bill of exchange. [10]

1. Bill of exchange actions

a) Direct actions

Direct actions are actions directed against those directly obliged to pay, that is, the acceptable trace and its avalist. Art. 31 par. (2) of the law stipulates that if the drawing refuses the payment, the holder of the bill of exchange, even if it is a shooter, has against the acceptant a direct bill of exchange for all that may be required under Articles 53 and 54 of the law. Direct actions are ordinary court applications that are exercised under the title; they are not subject to special formalities and can be exercised within the limitation period. [10]

b) The regression actions

Regress actions are actions directed against the others bound by the bills of exchange, except for the consignant and his avalist. Consequently, the regression actions can be exercised against the shooter, the guarantors and their avalists. [10]

In order to exercise the regression actions, it is necessary to draw up the protest of non-acceptance or non-payment, as the case may be. Therefore, the protest is a document that finds the refusal to accept the bill of exchange (protest of non-acceptance) or to pay the bill of exchange (protest of non-payment). The protest of non-acceptance is not mandatory, unless the bill of exchange contains a special clause presenting the bill of exchange upon acceptance or when the maturity is set at a certain time from the acceptance of the bill of exchange, protest against non-payment is indispensable for the preservation of regression actions. The protest of non-payment may be made in one of the two days following the day of payment (art. 41). [10]

The competence of protest preparation belongs to the bailiff (art 66 of Law no. 58/1934) and the notary public, under the

conditions of Article 8 letter h) of Law no. 36/1995 Of notaries public and notarial activity. [10]

The protest must include the elements provided by Article 69 of the Law no. 58/1934b. According to Article 73 of the law, if the holder of the bill of exchange agrees, the protest may be replaced by a declaration of refusal of acceptance or payment, written and dated on the title, signed by the one against whom the protest was to be made. [10]

Article 50 of the law stipulates that the holder of the bill of exchange must inform his guarantor and the shooter about non-acceptance or non-payment in the four working days following the day of the protest. In turn, each guarantor is kept so that, in the two working days following the day on which he received the notice, he will inform his guarantor of the received notice, specifying the names and addresses of those who have made the previous notifications. According to the law reproduced, if the drawing refuses acceptance or payment of the bill of exchange, the following, the holder of the bill of exchange must advise the debtors of regression to make the payment of the bill of exchange. The failure to comply with the formal notice of the debtors does not deprive the holder of the bill of exchange from the exercise of the regression actions. [10]

2. Bill of exchange execution

According to Article 61 of the Law no. 58/1934, the bill of exchange has the value of an enforceable title for capital and accessories, established according to Articles 53, 54 and 57 of the law. by virtue of the enforceability of the bill of exchange, the possessor may proceed directly to enforcement, without any further direct or regressive actions. Flag execution is preferable to direct actions and regression actions because it is faster and less expensive. [10]

In order to trigger the execution of the bill of exchange, the law requires the presentation of the bill of payment and the preparation of the protest for non-payment. The execution of the bill of exchange presupposes the material possession of the bill of exchange and, in order to be started, it is necessary that the rights of the bill of exchange are not prescribed. [10]

3. Extra-bill of exchange actions

Extra-family shares are common law actions that can be used by the holder of the bill of exchange to satisfy his or her rights as a member of the public. Extrabill of exchange

actions are: causal action and unjust enrichment action. [10]

a) Causal action

As the name suggests, causal action is the action derived from the fundamental report that caused the issuance of the bill of exchange. The issuance of the bill of exchange by the shooter, as well as the transmission by way of the gir is based on the existence of pre-existing legal relations between the participants in the development of the bill of exchange. [10]

b) Unjust cause enrichment action

The seat of the matter of the unjust enrichment action is Art. 65 of Law no. 58/1934, according to which, if the holder has lost the bill of exchange action against all the obligations and does not have against them causal action, he may exercise against the shooter, the acceptor or guarantor an action for the payment of the amount with which they have enriched themselves without cause in its damage. [10]

CONCLUSIONS

The conclusion of the paper provides a simple perspective on the complexity of the regulations related to the bill of exchange in commercial law. Cambodia, as a financial instrument, serves as a pillar of commercial and financial activities, facilitating the movement of capital and building trust between the parties involved in commercial transactions. In this respect, compliance with the form conditions of the bill of exchange is essential to ensure the validity and effectiveness of this instrument. From the indication of the amount and the beneficiary to the correct signature of the issuer, every detail is crucial in order to confer on bill of exchange its executive force and value as a negotiable instrument.

As regards the process of acceptance and refusal of payment of the bill of exchange, it is governed by strict procedures designed to protect the interests of all parties involved. Acceptance of the bill of exchange is an act with significant legal consequences, involving the firm commitment of the draw to make the payment at maturity. Where payment is refused, the legislation provides mechanisms of protection and remedy for the holder of the bill of exchange, such as the right to bills of exchange or extra-family shares for the recovery of amounts owed or the forced execution of the payment obligation.

As the bill of exchange is a complex financial instrument, it is essential that those in the commercial environment have a sound understanding of the rules and procedures associated with its use. A detailed knowledge of the formal conditions, the processes of acceptance and refusal of payment, as well as the legal remedies in case of litigation, litigation, it is crucial to prevent disputes and protect the interests of parties involved in commercial transactions. Therefore, a careful and informed approach to the use of bill of exchange is imperative for the proper conduct of business in the contemporary commercial environment.

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