I. NEGOTIABLE INSTRUMENTS - THE BILL OF EXCHANGE, THE PROMISSORY NOTE AND THE CHEQUE. NOTION, REGULATION, PRACTICAL USE

The bill of exchange, the promissory note and the cheque represent instruments that offer their legitimate holders the right to cash a certain amount of money, and they are considered, according to Romanian law, to be negotiable instruments. The bill of exchange and the promissory note also represent credit instruments, due to the debtor’s possibility to benefit from credit up to the due date. As far as the cheque is concerned, considering the very short presentation terms and to the impossibility to stipulate interest or payment conditions, this solely represents a payment instrument.

A. THE BILL OF EXCHANGE

Regulation

The bill of exchange is regulated by the provisions of Law no. 58/1934, regarding the bill of exchange and the promissory note (as amended by Government Ordinance no. 11/1993, approved and amended by Law no. 83/1994), provisions that are detailed by regulations of the National Bank of Romania.

What is a bill of exchange? In what circumstances does one issue a bill of exchange?

The bill of exchange is a negotiable credit instrument, a document by means of which a person (the issuer or the drawer), instructs another person (the drawee), to pay on the due date a cash amount to a third person (the beneficiary), or at the order of the latter. Unlike the case of the cheque, where the payment shall be always made by a bank, in case of the bill of exchange the payment may be made by any person who has a debt towards the issuer of the bill of exchange.

In most cases the bill of exchange is issued when a person must recover a debt from a debtor while, at the same time, in its turn has to pay a debt to a third person. In order to avoid a double payment, the issuer of the bill of exchange shall order its own debtor to pay the amount to the person to whom the issuer owes a debt.

Nevertheless, the bill of exchange may be issued even if there is no debt of the issuer towards another person, as the issuer may mention itself as the beneficiary of the bill of exchange.
What is the use of the bill of exchange?

The bill of exchange - credit instrument
The main role of the bill of exchange, namely that of a credit instrument, consists in stipulating a payment term, namely a period within which the debtor, while not being forced to pay the amount, benefits from credit. Similarly to the loan agreements, the bill of exchange may also specify an interest that is to accrue up to the date when the payment is made, which interest shall be to the benefit of either the initial beneficiary or a person to whom such right is conveyed. Moreover, the beneficiary is not obliged to wait for the due date, as the same has the possibility to procure the cash amount by selling the bill of exchange to a specialized bank (in which case the seller of the bill of exchange shall not also benefit from the value of the interest).

What are the requirements regarding the form of the bill of exchange?

In principle, the bill of exchange is a credit instrument concluded in the form of a deed under private signature (authentication is not mandatory). In order to be valid, the bill of exchange must contain certain mandatory entries, set forth in Law no. 58/1934: (i) the mention "bill of exchange", set forth in the very wording of the instrument, (ii) the unconditional order to pay a definite amount, (iii) the name of the drawee, (iv) the due date (the payment term), (v) the place where the payment must be made, (vi) the name of the beneficiary, (vii) the date and the place of the issuance, (viii) the issuer`s signature. Apart from said mandatory elements, the bill of exchange may also contain certain facultative elements (interest, domiciliation, various notes etc.). The bill of exchange may be drawn at sight, on term, within a certain term following the date of issuance or on a set date.

Acceptance and refusal of the bill of exchange

The payment order given by the issuer does not automatically entail the obligation of the debtor (drawee) to make the payment. Only by accepting the bill of exchange (acceptance that is written and signed on the bill of exchange) the drawee becomes obligated to pay the amount. In the event that the drawee refuses to accept the bill of exchange, the statement of refusal must be acknowledged, in compliance with the terms set forth the acceptance, by means of a document drafted by the bailiff, called non-acceptance protest. In such case the beneficiary may recover the amount from the issuer of the bill of exchange or from other persons who guaranteed the payment of the bill of exchange.

How can a bill of exchange be conveyed?
The specific method of conveyance of the bill of exchange to third parties is the **endorsement**, which consists in a statement written and signed by the endorser on the bill of exchange, resulting in the fact that the endorsee takes over all rights recorded in the bill of exchange. Furthermore, in the event that the drawee does not accept the bill of exchange, the person who conveyed the bill of exchange shall be obligated to personally pay the cash amount specified in the instrument. According to the general rules, the claim right incorporated in the bill of exchange may also be conveyed under the claim assignment.

**Can the payment of a bill of exchange be guaranteed?**

The securing of the cashing of a bill of exchange may be increased by the procedure of **guaranty**, by which a person (guarantor), guarantees the obligation assumed by one of the bill creditors. The guarantee is performed through a mention written on the bill of exchange and signed by the guarantor.

**What are the remedies in the case of a failure to pay the bill of exchange?**

In the event that the bill of exchange is not accepted or paid, the beneficiary of the bill of exchange may choose between filing for legal actions and bill enforcement. The simplest method to revaluate the bill of exchange in the event of a failure/refusal to pay is the enforcement, as the **bill of exchange represents a writ of execution** (it must only be vested with an executory clause), therefore the legal action is not necessary.

**B. THE PROMISSORY NOTE**

The promissory note is a credit instrument similar to the bill of exchange, regulated by the same normative act, and it represents a document by means of which a person (the issuer or the underwriter) undertakes to pay a certain cash amount at the due date to another person (the beneficiary) or upon the order of the same. Unlike the bill of exchange, this credit instrument solely involves two persons: the issuer and the beneficiary.

Similarly to the bill of exchange, the promissory note is a deed under private signature, but the use of standard forms is also permitted, provided that the signature is handwritten. In principle, the promissory note contains the same elements as the bill of exchange, the difference being that the payment order addressed to another person within the bill of exchange is replaced by a payment promise assumed by the very issuer of the promissory note.

Most rules regarding the bill of exchange also apply to the promissory note, which, in the event of non-payment, also represents a writ of execution, therefore legal actions can be avoided in view of reevaluating such promissory note.
C. THE CHEQUE

Regulation

The initial regulation of the cheque, law no. 59/1934 (the "Cheque Law") has been amended by Ordinance no. 11 /1993 and by the law for the approval of such Ordinance, namely Law no. 83/1994, the provisions of said normative acts being detailed by means of regulations of the National Bank of Romania.

What is a cheque?

The cheque represents a payment instrument by means of which a person (the drawer), orders a bank (the drawee) in which it holds available funds, to pay a cash amount to another person (the beneficiary) when the instrument is submitted.

Unlike the bill of exchange, the person obligated to release the cash amount specified in the cheque may only be a bank. From a practical point of view, the bank shall release to the client or to the "drawer" blank forms (checkbooks), by means of which the latter may dispose of the available funds placed in the account opened with the respective bank.

What are the cheque`s validity requirements?

From a formal point of view, the cheque Law sets out a series of entries that any cheque must contain: (1) the cheque denomination, set forth in the very wording of the title, (2) the unconditional order placed with the bank, regarding the payment of a certain cash amount, (3) the name of the bank to which the order to make the payment is addressed, (4) an indication of the exact address where the cheque is to be presented for cashing purposes, (5) the date and the place of issuance, (6) the signature of the drawer, autographic and handwritten (the banks shall accept for payment only cheques in which the name of the drawer is written clearly).

The legal sanction in the case of the absence of the aforementioned entries, as well as in the case of the improper mention of the same, consists in the invalidity of the cheque, with the following exceptions: (i) in the event of the failure to specify the place of the payment (of the submission), this shall be considered to be the place where the bank mentioned in the cheque has its head office; (ii) in the event of the failure to indicate the place of issuance, the cheque shall be deemed issued in the place set forth next to the drawer`s name (if such entry exists).

Optional entries

Apart from the mandatory entries provided for under the law, the cheque may also include references regarding the beneficiary, such as:
- the name of the beneficiary, with or without a "not upon order" clause. In such case the cheque may only be cashed by the nominated person;
- the name of the beneficiary, with a "upon order" clause. In such case the cheque may be conveyed (granted) to third parties in special circumstances set out under the Cheque Law;
- in the event that the beneficiary`s name is not indicated (with or without the "bearer" entry), the cheque shall be considered a "bearer" cheque, resulting in the fact that the cheque may be conveyed to, and cashed by, any legitimate holder.

As the cheque represents a fast payment instrument, payable at sight, no interest and no circumstances that condition the payment may be stipulated.

**The existence of available funds - an essential requirement for the issuance and cashing of the cheque**

The cheque must solely be issued provided that the drawer`s available funds may cover the entire amount specified in the contents of said cheque. To this effect, the issuance of a cheque by the drawer, in awareness of the fact that there is no sufficient coverage for its revaluation, the withdrawal of the funds from the account (in full or in part) after the issuance of the cheque, the prohibition imposed upon the bank, to pay the amount set forth in the cheque, all of the above resulting in the beneficiary`s inability to fully cash the cheque, represent variants of the fraud infringement, provided for under art. 215 paragraph 4 of the Penal Code.

**How may one convey the cheque?**

Similarly to the cases of the bill of exchange and the promissory note, the endorsement represents the specific method for the conveyance of the cheque. The person to whom the cheque was conveyed (endorsee), may further convey the cheque to other persons. By means of the endorsement, the beneficiary of the cheque may use the same for the purpose of making a payment himself/herself, thus waiving the cashing of the cheque.

The claim assignment also applies to the cheque, where the cheque bears the "not upon order" entry, but may not be conveyed by means of an endorsement (but only by means of a claim assignment).

The endorser shall be held responsible towards the endorsee and the subsequent holders of the cheque in the event of the drawee`s failure to pay the cheque.

**How can one diminish the risks of the impossibility to cash a cheque?**

**The guaranteed cheque**

One of the methods of alleviating the risk of the incapacity to capitalize on the cheque by submitting it to the bank is represented by the guaranty procedure, namely the guarantee, by a third party, of the cashing of the amount by the
beneficiary.
Similarly to the endorsement, the guaranty is performed by means of recording an appropriate entry on the cheque, bearing the signature of the guarantor. In the event that the cheque cannot be cashed from the bank, the guarantor shall be forced to pay the amount (which amount it may subsequently recover from the person for whom the same guaranteed).

Certified cheque
The safest guarantee of the cheque’s cashing is represented by the certification of the same by the issuer’s bank. By means of such certification, the bank guarantees the fact that at the respective time the amount set forth in the cheque is available in the account. Consequently, the respective amount can no longer be drawn by the issuer and it cannot be used by the bank for other purposes either, the cashing of the cheque thus being guaranteed by the bank.

Cashing of the cheque. Terms of submission and recourse.
The cheque may be cashed on the term specified in its contents in view of the submission. In the event that the submission of the cheque should exceed such date by 8 days (if the same is payable in the very locality where it was issued), 15 days (if the same is payable in a locality other than that where it was issued), or, respectively, 30 days (if it is issued in a foreign European country and payable in Romania), and 70 days (if it is issued in a foreign non-European country and payable in Romania), the beneficiary shall lose the possibility to obtain compensation (in the case of the non-existence of available funds) from the endorsers or from the guarantors.
The right to obtain compensation from the drawer, the endorsers and the guarantors shall be barred within 6 months following the expiry of the submission term.

The enforcement of the cheque in the case of a lack of available funds
The cheque represents a writ of execution, which confers the right to directly demand enforcement, without the need for a prior legal action against the drawer, the endorsers or the guarantors, as the case may be, provided that the aforementioned prescription terms are complied with.

D. CENTRAL STATION FOR PAYMENT-RELATED INCIDENTS
In view of preventing the issuance/the use of credit and payment instruments in bad faith, the Central Station for Payment-Related Incidents (CIP) was established within the National Bank of Romania.
CIP collects the information regarding major payment incidents, such as: payment instruments drawn in the absence of account coverage, cheques issued without the authorization of the bank, cheques issued with a false date or which fail to specify a
mandatory entry, circular or traveler`s "bearer" cheques, cheques issued by a drawer with respect to whom/which there exists a banking prohibition, bills of exchange discounted in the absence of the assigned claim at the time of its assignment.

What is the practical interest of the CIP?

The practical interest of the CIP consists in any person`s possibility to review this database, through a bank, thus being able to determine whether any payment-related incidents were registered in the name of a potential business partner.

LEGISLATIVE RETROSPECTIVE


2. Law no. 333/November 15, 2005 regarding the ratification of the Convention between Romania and the Austrian Republic, for the avoidance of double taxation and prevention of tax evasion with respect to income and capital taxes, and of the annex-protocol, signed in Bucharest on March 30, 2005.

3. Order of the minister of public finances no. 1752/November 17, 2005 for the approval of the accounting regulations complying with the European directives. The regulations approved by said order refer to Directive IV of the European Economic Communities and the accounting Regulations complying with Directive VII of the European Economic Communities. Said regulations provide for the scope, format and contents of the annual financial statements, the accounting principles and the assessment rules, as well as the rules regarding the drafting, approval, auditing and publication of the annual financial statements.

4. Order no. 70/November 22, 2005 of the National Securities` Commission for the approval of Regulation no. 15/2005 regarding financial investment services.

5. Government Emergency Ordinance no. 165/November 24, 2005 for the amendment of Government Ordinance no. 92/2003 regarding the fiscal procedure Code. The amendments refer to the underwriting measures and the liquidation of fiscal claims by means of enforcement.

6. Law no. 357/December 6, 2005 regarding commodity exchanges. Said law set out the method of establishment, organization and operation of
commodity exchanges.

7. **Order no. 1870 of December 6, 2005 of the Ministry of Public Finances** for the approval of the Instructions for the implementing of the provisions of art. 1942 "Provisions regarding the recovery of illegal or prohibited state aid" of Government Ordinance no. 92/2003 regarding the fiscal procedure Code, as republished, with its subsequent amendments and additions. Said Instructions refer to the elements that must be included in the enacting terms of the Competition Council`s Decisions regarding the recovery of illegal or prohibited state aid.

8. **Law 371/December 13, 2005** for the approval of the Government emergency Ordinance no. 65/2005 regarding the amendment and supplementing of Law no. 53/2003 - The labor Code

9. **Law no. 403/December 27, 2005** for the amendment and supplementing of Law no. 130/1999 regarding certain measures for the protection of employees. Said law amended the obligations of the employer, initially provided for under Law no. 130/1999, as well as the sanctions provided for by the same.

10. **Government Resolution no. 1834/December 22, 2005** for the amendment and supplementing of the methodological Norms for the implementing of Government emergency Ordinance no. 88/1997 regarding the privatization of companies, as subsequently amended, and of Law no. 137/2002 regarding certain measures for the acceleration of privatization, approved by Government Resolution no. 577/2002. The amendment refers to the situations where there exists an obligation of the involved public institution to decide upon the drafting of an assessment report in view of determining the offer price.

11. **Order 902/December 20, 2005 of the Ministry of labor, social solidarity and the family** and of the President of the National Statistics` Institute with respect to the Supplementing of the Romanian job Classification.

12. **Law no. 4/January 5, 2006** for the amendment of the name and the classification of the commodities in the Romanian import customs Tariff, and of the customs duties related thereto.

**VOICU & FILIPESCU – NEWS**

- Voicu & Filipescu advised Sensiblu SRL, the largest Romanian chain of
pharmacies, in the process of acquiring the chain of pharmacies composed of 33 pharmacies held by the GlaxoSmithKlein group in Romania.

- Voicu & Filipescu advised, as Romanian legal counsel, Rabobank in granting a credit facility to Rynart Transport BV, in all the matters related to the loan of up to EUR 60 million secured by assets and shares of the Romanian entity held by Rynart.
- Voicu & Filipescu advised, as Romanian legal counsel, Deutsche Forfait s.r.o. and Deutsche Forfait AG in granting a credit facility to Metrorex, in all the matters related to the loan of up to EUR 45 million and in other issues related to the refinancing of municipal loans.
- Voicu & Filipescu advised in the year 2005 private acquisition transactions exceeding US $ 1 billion of the total of US $ 3.4 billion recorded on a national level.
- In the last six years, Voicu & Filipescu advised 4 of the 10 most important acquisition transactions from Romania.
- Voicu & Filipescu have the pleasure of announcing the election of two new partners of the Firm, Mrs. Marta Popa and Mr. Daniel Costea.
- Voicu & Filipescu have the pleasure of announcing the beginning of the professional relationship with with Mr. Cristian Gavria as Senior Associate and Head of Litigation & Arbitration Department. He successfully finalized 14 arbitration cases related to post-privatization, competition, construction, corporate and bankruptcy in accordance with ICC, UNCITRAL, Vienna and CAB`s Rules exceeding the amount at stake of US$ 200 mil
- Voicu & Filipescu have the pleasure of announcing the beginning of the professional relationship with with Mrs. Diana Condurache, as a member of the Litigation & Arbitration Department.

**Parties to a Bill of Exchange**

There are three parties to a bill of exchange:

1. **Drawer** is the maker of the bill of exchange. A seller/creditor who is entitled to receive money from the debtor can draw a bill of exchange upon the buyer/debtor. The drawer after writing the bill of exchange has to sign it as maker of the bill of exchange.

2. **Drawee** is the person upon whom the bill of exchange is drawn. Drawee is the purchaser or debtor of the goods upon whom the bill of exchange is drawn.

3. **Payee** is the person to whom the payment is to be made. The drawer of the bill himself will be the payee if he keeps the bill with him till the date
of its payment. The payee may change in the following situations:
(a) In case the drawer has got the bill discounted, the person who has
discounted the bill will become the payee;
(b) In case the bill is endorsed in favour of a creditor of the drawer, the
creditor will become the payee.

Normally, the drawer and the payee is the same person. Similarly, the drawee
and the acceptor is normally the person. For example, Mamta sold goods worth
Rs.10,000 to Jyoti and drew a bill of exchange upon her for the same amount payable
after three months. Here, Mamta is the drawer of the bill and Jyoti is the drawee. If
the bill is retained by Mamta for three months and the amount of
Rs. 10,000 is received by her on the due date then Mamta will be the payee. If Mamta
gives away this bill to her creditor Ruchi, then Ruchi will be the payee. If Mamta gets
this bill discounted from the bank then the bankers will become the payee.

In the above mentioned bill of exchange, Mamta is the drawer and Jyoti is
the drawee. Since Jyoti has accepted the bill, she is the acceptor. Suppose in
place of Jyoti the bill is accepted by Ashok then Ashok will become the acceptor.

SPECIMEN OF BILL OF EXCHANGE

Mamta
Rs.10,000

New Delhi
April 01, 2006

Three months after date pay to me or my order, the sum of Rupees Ten Thousand
only, for value received.

Accepted
(Signed)
Jyoti
1.4.2006
73-B, Mahipalpur
New Delhi 110 037

(Signed)
Mamta
196, Karol Bagh
New Delhi

To
Jyoti
73-B, Mahipalpur
New Delhi 110 037
Advantages of Bill of Exchange

The bills of exchange as instruments of credit are used frequently in business because of the following advantages:

- **Framework for relationships**: A bill of exchange represents a device, which provides a framework for enabling the credit transaction between the seller/creditor and buyer/debtor on an agreed basis.

- **Certainty of terms and conditions**: The creditor knows the time when he would receive the money so also debtor is fully aware of the date by which he has to pay the money. This is due to the fact that terms and conditions of the relationships between debtor and creditor such as amount required to be paid; date of payment; interest to be paid, if any, place of payment are clearly mentioned in the bill of exchange.

- **Convenient means of credit**: A bill of exchange enables the buyer to buy the goods on credit and pay after the period of credit. However, the seller of goods even after extension of credit can get payment immediately either by discounting the bill with the bank or by endorsing it in favour of a third party.

- **Conclusive proof**: The bill of exchange is a legal evidence of a credit transaction implying thereby that during the course of trade buyer has obtained credit from the seller of the goods, therefore, he is liable to pay to the seller. In the event of refusal of making the payment, the law requires the creditor to obtain a certificate from the Notary to make it a conclusive evidence of the happening.

- **Easy transferability**: A debt can be settled by transferring a bill of exchange through endorsement and delivery.

Maturity of Bill

The term maturity refers the date on which a bill of exchange or a promissory note becomes due for payment. In arriving at the maturity date three days, known as *days of grace*, must be added to the date on which the period of credit expires instrument is payable. Thus, if a bill dated March 05 is payable 30 days after date it, falls due on April 07, i.e. 33 days after March 05. If it were payable one month after date, the due date would be April 08, i.e. one month and 3 days after March 05. However, where the date of maturity is a public holiday, the instrument will become due on the preceding business day. In this case if April 08, falls on a public holiday then the April 07 will be the maturity date. But when an emergent holiday is declared under the Negotiable Instruments Act 1881, by the Government of India which may happen to be the date of maturity of a bill of exchange, then the date of maturity will be the next working day immediately after the holiday. For example, the Government declared a holiday on April 08 which happened to
be the day on which a bill of exchange drawn by Gupta upon Verma for Rs.20,000 became due for payment, Since April 08, has been declared a holiday under the Negotiable Instruments Act, therefore, April 09, will be the date of maturity for this bill.

8.5 Discounting of Bill

If the holder of the bill needs funds, he can approach the bank for encashment of the bill before the due date. The bank shall makes the payment of the bill after deducting some interest (called discount in this case). This process of encashing the bill with the bank is called discounting the bill. The bank gets the amount from the drawee on the due date.

Endorsement of Bill

Any holder may transfer a bill unless its transfer is restricted, i.e. the bill has been negotiated containing words prohibiting its transfer. The bill can be initially endorsed by the drawer by putting his signatures at the back of the bill along with the name of the party to whom it is being transferred. The act of signing and transferring the bill is called endorsement.

8.7 Accounting Treatment

For the person who draws the bill of exchange and gets it back after its due acceptance, it is a bill receivable. For the person who accepts the bill, it is a bills payable. In case of a promissory note for the maker it is a bills payable and for the person in whose favour the promissory note is drawn it is a bills receivable. Bills receivables are assets and Bills payable are liabilities. Bills and Notes are used interchangeably.

8.7.1 In the Books of Drawer/Promissor

A bill receivable can be treated in the following four ways by its receiver.
1. He can retain it till the date of maturity, and
   (a) get it collected on date of maturity directly, or
   (b) get it collected through the banker.
2. He can get the bill discounted from the bank.
3. He can endorse the bill in favour of his Creditor.

The accounting treatment in the books of receiver under all the four alternatives is given below under the assumption that the bill is duly honoured on maturity by the acceptor.

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