

Răducan OPREA
THE VOLUNTARY PAYMENT OF THE BILL OF EXCHANGE

Abstract

The bill of exchange is extinguished normally by paying it at the maturity day, mainly by the main debtor – the acceptor of the bill of exchange or the issuer of the payment order.

If the bill of exchange is not honoured at the maturity day, the possessor has several options for action.

The payment of the bill of exchange in most cases is obtained at its presentation by the possessor to the accepted drawer.

Voluntary payment may be studied in two phases, namely: the submission of the payment and the payment itself. Basically payment is obtained in most cases at presentation. It is possible that the payment not be paid by the principal debtor at the submission of the bill, but later by a debtor of recourse. Thus the study of these two distinct phases of voluntary payment, is fully justified. The submission of the payment concerns also the forced payment, which is a further argument for the separation of the two problems listed above.

A. *Submission of the payment.*

The submission of payment involves two issues, namely: the time of the submission of payment and the place where the submission should be made.¹

1. The time of the submission for payment. In terms of bills of exchange, unlike the common law, bill must be presented for payment at maturity. A civil or commercial claim may be presented for payment at maturity, but nothing deters to require payment as

¹ Stanciu D. Carpenaru- Romanian Commercial Law, 7th Edition, revised and enlarged, "Juridic Universe", Bucharest, 2008, pag.591.

long as this claim was not barred. Failure to pay a claim of common law does not entail any unfavorable consequence to the creditor.

The bill of exchange due on demand, is payable to any presentation so as to show, but at the latest within one year counting from the date of issue, if this term was not extended or abbreviated by the drawer, or abbreviated by the guarantors, in a clause inserted in the bill.

The drawer can stipulate that a bill on demand not to be presented for payment only after a certain time. Eg.: The drawer will write " you will pay on demand or after 1 January 2005" assuming that the issue took place on November 1. 2004. In this case the term of one year will run from 1 January 2005.

The bill of exchange with maturity date at a certain time from the view will be payable at maturity, to be determined, depending on the date of acceptance, or if the acceptance was refused, and it was not dated, from the date of protest objection, or the protest of not dating.

Bills of exchange with maturity at a specific time on demand, will bear the clause "you will pay, three months (or 15 days etc.) from the view. Not only the bills of exchange can be provided with maturity at a specific time from the view but also the promissory note. There is no acceptance for these notes, they will be presented to the visa issuer, the date which will compute the maturity date.

Submission to acceptance or visa will also be made within one year from the issuance, this term can be extended or abbreviated as the bill on demand.

The bill of exchange with the maturity date at a time from the date of issue, will be specified in days, weeks or months (principiar in years, which in practice does not meet).

The law sets some rules for the counting of maturity date: maturity in one or more months is considered appropriate at the time of the month in which payment shall be made, if that month is the adequate time, otherwise the last day of the month (art. 39. 1) . Eg. A bill of exchange payable to a month of the issue, issued on January 30 will be due on the last day of February.

Maturity at the beginning, the middle or end of the month, then the first day, the fifteenth or last day of the month. With half of the month means 15 days. Expressions 8 days and 15 days is 8 days and 15 days effective, not one or two weeks.

*The bill of exchange due on the fixed day will be payable on the day shown in the bill.*¹

For bills of exchange due to a fixed day at a time from the date of issue or at a time from the view, the presentation for payment may take place either at the maturity date or within two working days that follow it (Art. 41) . If the maturity date is on a legal holiday, payment may be required only on the working day following (Article 95). The statutory holiday means the holiday in which courts do not work. In some countries public holidays are known as "bank holidays", because there are no banking operations and can not trade.

Bills of exchange with maturities in view can not be presented for payment only until the last day of the period of one year from the issue, not in the two working days following. If the last day would be on a Sunday or holiday, the payment will be made not later than the day preceding.

Bills issued and payable in places with different calendars. Article 40 provides for the calculation of maturity date for bills having the

¹ Idem, pag. 592

place of payment in a country in which the timing is different from that of the place of issue. And here it must be a distinguish between bills of exchange due to a day fixed and maturing at a time from the date of issue.

Maturing bills of exchange to one day will be fixed by the calendar of the place of payment and the maturity at a time from the date of issue by the calendar of the place of issuance.

The terms for the submission of the bills of exchange are considered after the calendar of the places of issuance, or to a certain time from the view, or the payment or the acceptance or visa.

The above provisions of art. 40 are optional, in the sense that it applies only if the bill does not stipulate a different method of calculating the due date.

Prepay. As a rule, the creditor can require payment only at maturity, so the debtor can provide payment only at maturity. "The owner of bills - art. 44 says - is set to receive payment before maturity. The drawer who pays before maturity makes on his risk and danger.

What could these risks and dangers be? Eg.:The owner is an ill-intentioned owner, receiving bill by theft. If a debtor pays before (in advance) and at maturity it is proved that the real creditor is other than the one who received the payment, you will have to pay to the owner's legitimate bill. Another example: the debtor pays in advance the true owner, but this one is declared bankrupt before maturity.

One of the consequences of bankruptcy is the fact that the bankrupt gives up all his goods and puts them in the administration of a special administrator. The administrator may require, at maturity, the debtor to pay the amount of the bill, to the mass of bankrupt.

Refusal to accept payment at maturity. Owner can not refuse payment at maturity, or total or partial. In case of refuse, debtor may deposit the amount of deposits at the House Bank, and a receipt will deposit in court, on the creditor's risk and danger.

*Place of submission for payment.*¹ The bill of exchange must be presented for payment at the place and address stated in the bill. The place of payment is the geographical locality where payment must be made, not the exact address where payment is made. But the law of bills of exchange does not require, as a prerequisite, an address indicating where the bill is payable. Therefore, art. 42 establishes a preference order of addresses to which payment will be required. Thus art. 42 says: "In the absence of an address, the bill of exchange must be presented for payment:

1. at the drawer's home, or the person designated to pay the bill for this ;
2. at the acceptance by intervention's home, or the person designated to pay the bill for it,
3. at the address of the one indicated in case of need. It means the home address where a person actually lives.

Importance of presenting payment. Common law claims can even be transmitted through the transfer, generally they are not intended to circulate, and if they are submitted, the debtor must receive a notification so as the assignment to be enforceable against. Following notification, the debtor will know who is the new creditor. The bill moving through endorsement, about whose existence the drawer- or in the case of promissory notes, the issuer - must not know, like any other signatories, it may get in the hands of a person, about whose existence most borrowers are not aware. Submission of the payment is to make known to the debtor, the creditor's bill, which is to justify his entitlement to the amount of the bill through a series of uninterrupted endorsements. Another goal

¹ Idem, pag. 593

pursued by the legislature by compulsory declaring of the submission to payment, is that the regression debtors not remain too long in uncertainty. In fact the regression debtors will be threatened to require payment only if the main debtor fails to pay. To know what the main debtor will do, the creditor will have to submit bill for payment. Because the uncertainty would remain in the case of regression debtors, legislature bills requires the holder to submit payment without delay - the due date or within two working days following - and this under certain penalties.

Failure to pay shall entail the loss of rights of recourse. In this regard therefore, the presentation of the payment provided for in provisions of the art. 41 al. 1, is considered as a conservative measure of the rights of recourse. But it is mentioned again that only the rights of recourse are lost through failure to pay, not the right to direct action against bills of exchange's acceptor or the issuer of the promissory note.

In order to bring action against the main debtor, the submission to pay is not required, the bills of exchange claim may be instituted against it any time within the period of prescription, ie within three years from the due date.

Bill of exchange will be considered submitted for payment by the debtor on the day on which the debtor will receive the copy of the bills of exchange with the summons, or in case they proceed through art. 61 by investing the bill in enforceable formula on the day the debtor is given notice of payment provided for in art. 135 Civil Procedure Code.

Payment of bills.

Who should pay? We have seen that the presentation must be made first to the drawer, whether he accepted or not. If the drawer accepted, he is the main debtor of the following bills and makes the

payment. The drawer who pays, it's on his right to ask, to receive the bill with the words of redemption, written by the owner (article 43 al.1). Against a refusal to surrender bill, the drawer may refuse payment. The title bill is necessary „ad disponendum”, that any rights arising from the bill may not be exercised without the possession title. Such creditor's bill may not require payment if he does not have the title possession, to-surrender it, on request, to the drawer who pays.

The drawer will not neglect, of prudence, to request delivery of title, because otherwise he is exposed to the risk of paying again.

Obviously, the drawer will have an action for damages, or for enrichment without cause against which the owner did pay once but if it is insolvent, the drawer will bear the risk of double payment. The abusive owner will have to bear, in addition the penal consequences.

In case of a partial payment, the debtor may not claim to surrender bill, because the creditor needs the title, as long as the claim was not paid in full, to take legal action against the rest of the unearned claim. But the debtor will require to make statement on the bill and to give receipt for the amount of the paid sum (art. 43. Al. 3).

In addition to acceptor, the drawer, the endorser and the guarantee are held in solidarity to the holders, to which the holder has the right to pursued, individually or collectively, without taking into account the order in which they were bound.

I have seen, talking about the guaranty of the bill of exchange, that the obligation of the bill is solidary, which means that all the signatories of the bill have the right to pay to the holder or to any other subsequent signatories, which were found upon a legitimate bill. So at maturity date any of the regression debtors may pay,

having the right to require the surrender of bills, protest and a return paid (art. 55).

The payment consequences for the debtors are that: "That which is paid at maturity, it is free, except if it was not fraud or mistake" (art. 11 al.2). Debtor may commit fraud, while knowing that bill was stolen, agrees to pay it to the one who stole it, over the legitimate creditor, or even when he does not know this, after all appearances, the one who presents the bill for payment, he does not appear to be the legitimate holder.

The one who pays frees himself and all subsequent signers. If the one who pays is a regression debtor, he will win the right to require the payment from the main debtor and the debtors of the previous regression.

Who should receive the payment? Payment must be done to the justified holder of a regular succession of the endorsement. The one who pays "is obliged to check the regular sequence of the endorsement, but not the authenticity of guarantors' signatures" (art. 44)¹. So a regular succession of the endorsement must be verified only formally. It does not matter if one or more endorsements are false. Debtor also has to deal with the regular succession of endorsement to the creditor, not by what follows. Eg.: A bill is signed by A as drawer and B, C, D, E, F as guarantors. Assuming D guarantor has paid the creditor to maturity, he is entitled to demand payment from its previous signatories - ie (A, B, C - and acceptor. The one who was required payment will have to check only the succession of the endorsement until D, no matter whether the endorsements rear of D, has a regular sequence or not.

¹ When it is required to pay a bill with endorsement reached at maturity, the debtor is required to pay. Without being able to invoke any exception as to the authenticity and regularity of the endorsements of the bill, or the ability of guarantors; The only objection that can be done on the falsity of the bills and disprove fraud in obtaining them. Cas. Dec III. 1469 of 31 May 1939. Rev.Dr.Com. 1940, p. 114.

If the sequence of irregular endorsement shows a gap, the holder of the bill of exchange has no bills's rights only against the guarantors following the gap. Eg. Whether incorporating the above hypothesis, the guarantor of B is missing from the endorsement series, the holder will have rights only against C, D, B and F. Against B and A and the acceptor, he will have only civil and commercial rights, because he is in direct causal relationships, but not rights of bills of exchange.

Currency in which payment must be made. Article 45 lays down rules which must be taken to the stipulated payment in foreign currency. Today, however, foreign currency debts stipulated, be payable in the country or abroad, fall under the estimates legislation. In the condition of uncontrolled foreign exchange, the provisions of the art. 45 are applied: "When a bill is payable in a currency that has no exchange rate at the place of payment, the amount may be paid in the country currency, according to the value of its due date".

"If the debtor is in default, the holder may require that the amount to be paid in the country currency or with the value from the due date or the value after the date of payment.

"The amount of foreign currency is determined by the characteristics of the place where the payment is made. However the drawer can stipulate that the payment will be calculated as indicated in a bill pending. "The rules shown here do not apply when drawer stipulated that payment will be made in a specified currency(actual payment clause in a foreign currency ").

"If the amount is shown in a currency with the same name but a different value, in the country of issuance and payment, therefore, presumably showing that refers to the place of payment.

*Payment by intervention*¹.

Payment and acceptance of intervention may be made by a designated person, shown in the bill by the drawer, guarantors, or a guarantee. The designated person must be presented the bill for payment, if the drawer does not pay. It will be asked to enter protest for non-payment against the drawer, then this bill will be paid by the designated person when needed. If this does not pay, it will train a new protest of non-payment and called versus protest. Not taking the action of protest against the designated person, leads to the loss of rights of recourse against the one who made the designation, and against its post guarantors. So for example if three guarantors sign the bill, the second shows in the bill the designated person for which the owner fails to protest the non-payment (for protest), the guarantor of the second and following its guarantor will be freed.

Payment can be offered in, spontaneously by a person who is not included in the bill of exchange, or even by a signatory of the bill, the regression debtor. The acceptor of the bill and the issuer of the promissory note can not pay by intervention, because they are main debtors and have to pay under their own commitment. The person who pays by intervention without being mentioned in the bill, he is called intervener for honour, and one for which this payment was made, is called honoured person. In terms of acceptance, I saw that the owner of bill is not required to receive an acceptance of a person not mentioned in the bill or accept a person who is already signed on as a regression debtor if the debtor was not indicated on the bill to pay, showing the reason for these devices. When it comes to payment, however, the holder is obliged to receive payment of the intervener, because in the last analysis the holder tends to collect the bill of exchange, so he has no reason to refuse payment, or who would come. Denial of payment has the effect of

¹ Idem, pag. 594

loss of rights of recourse against the one to which the payment was offered and against the guarantors (Article 80).

Conditions for payment by intervention.

1. Payment by intervention can take place whenever the holder of the bill is to bring action for recourse to maturity or before maturity (art. 78 al. 1). So we can offer payment by intervention when it was not accepted, or not paid.

2. Payment by intervention must be full (art. 78 al. 2) the action is explainable for only the payment in full remitted the claim stops the action of regression. A partial payment would leave open the path of recourse for the amount of unpaid sum.

3. Payment by intervention must be made till the day following the day on which the protest had to be made (art.78 al. 3).

Formally, in order to be valid, the payment by intervention has the following characteristics:

1. To result from the protest. Thus in the protest of non-payment, or objection, which follows payment by intervention, this payment must be mentioned, and if the protest has been trained, the statement will be made at the end of protest (Art. 78 al. 4).

2. To make a statement about the payment by intervention in the bill, showing the person to whom to intervene. In the absence of such indication the payment is considered to have been paid by the drawer (art. 81).

The payment by intervention.¹

1. the payment by intervention remits the debt of a bill of its holder.

2. Anyone who has paid by intervention has the right to claim the bill and protest (Art. 81 al. 2).

3. Intervener gains the autonomous rights of the bill, not only the rights deriving from the holder to which the payment was

¹ Idem, pag 595.

made. These rights can exploit against the honoured person and against its anterior holders. The guarantors who follows the honoured person are free.

As a corollary of the above rule, the law provides that if more interveners offer payment, it will be accepted the payment that frees more guarantors. Thus if the bill has several guarantors, and the payment is made for the guarantor of the first level and guarantor of the third level, it will be accepted the payment of the one who pays for the first guarantor, such as all the other guarantors will be free (art. 82). The penalty for breaking this device is made as follows: "That the wittingly, occurs contrary to these rules, lose the right of recourse against those who would have been free (art. 82). So the law provides no penalty for the owner, it may accept payment of any intervener, even when such payment frees less guarantors. Legislature has considered the holder of the bill does not care from whom he is receiving the payment and who are being freed. Penalty is provided for the intervener. So for example if someone offers to pay for the guarantor of the three level, knowing that another, has offered to pay for the guarantor of the first level, by his payment - although to be guarantor of the three level - will free all those who had been freed by the payment made by the guarantor for the first level. Therefore the guarantor of the third level and of the second level will be free.

Utility payment by intervention.. Theoretically payment by intervention has some benefits, but it has little practical use, for understandable reasons. Indication of a person to accept or pay instead of the drawer, although security is a theoretical and an additional advantage for smooth movement of the bill actually produced the opposite effect often because it raises suspicion about the solvency of drawer, which it is not likely to facilitate the movement bills. Intervention to honor on the other hand, is not practiced, because another institution, fenced in less stringent rules, allowing to obtain the same results, it is the guarantor posterior to

the protest. In fact the one who wants to pay a bill left in distress, preserving the right to collect the claim by bills of exchange legislature, can pay the owner, who has to give the bill by posterior endorsement. Thus there is a surrender of the bills, the surrender has the right to pursue collection of bill against all the signers of the bill, except the holder, from which he received her. This implies that the holder is willing to surrender the unpaid bill by posterior endorsement. Theoretically it is possible to meet creditors to prefer a random bill of exchange than immediate payment. Practically, however, this hypothesis does not exist.

Payment by intervention interests only if the holder of bill of exchange, for purely personal reasons, such as a desire to tease a particular debtor that surprised him in difficulty, he would not like to accept payment from other persons other than those signed in the bill.

In this case, by intervention the holder may be obliged to accept payment under the penalty of loss of rights, of recourse against those whose liberation would be achieved through the payment offered.

A regression debtor may also have the interest to pay. Eg. - The guarantor of the first level of a protested bill knows that the holder can track a posterior guarantor, whether it is at his hand, whether he considers it more solvent, but if the guarantor then turns against the previous guarantor, so even against the first guarantors to whom he is requiring the sum and the costs of the process, in order to avoid these costs, the first guarantor can pay by intervention, and so he frees himself and the subsequent guarantors.

Bibliography

1. Stanciu D. Carpenaru - Romanian Commercial Law, The 7th Edition, revised and enlarged, Juridic Universe Publishing house, Bucharest, 2008.
2. The magazine of Copmmercial Law

Analele Universității "Dunărea de Jos", Galați - Fascicula XXII
Drept și Administrație Publică Anul II, Nr. 1 - 2009
Galati University Press ISSN 1843 -8334

3. The Law no. 58/1934 - on the bill of exchange and the promissory note, modified.
4. The methodological rules nr. 6/1994 regarding the trade of the bank companies and other credit companies.
5. Technical rules no.104/1994 regarding the bill of exchange and the promissory note.