

Chapter 28

Bill of exchange, Promissory Note and Cheque

1. General

Romania is not part of the Geneva Convention of June 7, 1930 for a unitary law of the bills of exchange and promissory notes and did not ratify the Geneva Convention of March 19, 1931 regarding cheque, although having signed the latter. However, the applicable legislation, adopted for the most part in 1934, follows exactly the rules established by the two conventions.

2. Main Regulations

The main legal regulations applicable in the field are:

- Law No. 58/1934 on the bill of exchange and promissory note, with subsequent amendments and supplements (“Law No. 58/1934”);
- Law No. 59/1934 on cheque, with subsequent amendments and supplements (“Law No. 59/1934”);
- Framework-norms No. 6/1994 of the National Bank of Romania (“NBR”) regarding the trading of bills of exchange and of promissory notes by banking companies and other credit companies, based on Law No. 58/1934 on the bill of exchange and promissory note, with subsequent amendments and supplements (“Norms No. 6/1994”);
- NBR framework-norms no 7/1994 regarding trading of cheques by the banking companies and other credit companies, based on Law No. 59/1934 on cheques, with subsequent amendments and supplements (“Norms No. 7/1994”);
- NBR technical norms No. 4/2008 on cheques (“Norms No. 4/2008”);
- NBR technical norms No. 5/2008 regarding the bill of exchange and the promissory note (“Norms No. 5/2008”);
- Regulation No. 10/1994 regarding multilateral compensation of the inter-banking payments without paper cash, with subsequent amendments and supplements (“Regulation No. 10/1994”);
- NBR Regulation No. 1/2001 regarding the organization and functioning with the NBR of the Payment Incident Bureau Head-office, with subsequent amendments and supplements (“Regulation No. 1/2001”).

3. Formal requests

As a general comment, all mentions (except for the amount) on bills of exchange, promissory notes and cheques must be written with capital letters and with black/blue ink.

3.1. The bill of exchange

Unlike other legal deeds, the bill of exchange, which is a credit title, is characterized by the observance of strict forms, as briefly presented below. Via the Technical Norms No. 5/2008 NBR has introduced, as of September 1st 2008, a new standard form for usage in the relationships with commercial banks. Any lack of clarity in the bill of exchange may not be solved by reference to other legal deeds, by way of consequence being susceptible to render such null.

a) The name “bill of exchange”

This name must be expressly mentioned in the title and, in any case, it must be placed above the signature of the drawer.

b) The order of payment for a determined amount

The order of payment must be clear, exact and unconditioned. Any conditions, limitations or counter-prestation added to the order of payment may lead to the nullity of the bill of exchange.

The value of the amount to be paid must be clearly specified, not allowing the insertion of criteria that may serve to the subsequent determination of the amount.

c) The name of the drawee and of the beneficiary

It is recommended for the name of the drawee or of the beneficiary natural/legal person be specified as in the identity card, or, as the case may be, as registered with the Trade Registry, otherwise the banks could deny the entrance of the bill of exchange in the banking compensation circuit.

d) Specification of the maturity date

The maturity date must be unique. In case the maturity date is not specified on the bill of exchange, it is reputed to having been issued at sight. Furthermore, the bill of exchange may have the maturity date on a certain period of time since the sight, on a certain period of time since the issue or, most frequently, on a calendar day indicated as such.

e) Specification of the place of payment

In case the place of the payment is not specified, it is considered as place of payment the domicile of the drawee. As a principle, the place of payment will be the bank where the drawee has open accounts.

f) Date and place of issue of the bill of exchange

The date of issue must be entirely and certainly specified, the absence hereof could lead to the nullity of the bill of exchange. In case the bill of exchange does not specify the place of issue, it is considered to have been issued in the place indicated near the name of the drawer. In case this mention is also absent, the bill of exchange will be null.

g) Signature of the drawer

This is the most important mention of the bill of exchange. A bill of exchange bearing the signature of the drawer only may be considered valid as a signed blank bill of exchange, case in which the right to fill in the missing mandatory mentions falls upon the owner of the bill of exchange.

The signature must be autograph and personally executed by the drawer or the representative hereof. It must be explicit, including the first and last name of the individual assuming the obligation, or, if the case may be, the name of the legal person and the first and last name of the legal representative. In case the drawer is a legal entity, NBR Norm No.7/2008 expressly provides that the authorized signature of the legal representative suffices, the stamp not being necessary.

3.2. The promissory note

The promissory note, being essentially a simplified bill of exchange, therefore a credit title also, must follow in principle the same formal requests, but in accordance with the characteristics hereof. As in the case of the bill of exchange, NBR has established a new standard form for the promissory note as of September 1st 2008. In order for the promissory note to be valid, it must include the following:

- (i) the name "promissory note" must be included in the title;
- (ii) unconditioned promise from the issuer to pay a determined amount;
- (iii) specification of the maturity date;
- (iv) specification of the place where the payment must be made;
- (v) specification of the person the payment must be made to;
- (vi) signature of the issuer.

3.3. The cheque

Unlike the bill of exchange and the promissory note, the cheque is not a credit title, but a simple payment instrument. However, most of the principles governing the regime of the bill of exchange and of the promissory note, especially regarding the issuance forms, are also applicable for cheques.

The conditions requested for the validity of the cheque are as follows:

- (i) the drawee may only be a banking company, except for the situation when the cheque is drawn and payable abroad, when the drawee may be a person other than a banking company;
- (ii) the drawer may issue the cheque only if having a cash deposit with the drawee set up prior to the issue of the cheque and of a value at least equal to the cheque;
- (iii) the drawer should have signed a convention with the drawee, prior to the issuance of the cheque, where the latter allows to pay the cheque;
- (iv) the name “cheque” must be included in the title and expressed in the language used to write the title;
- (v) the cheque must include the unconditioned order of payment of a certain amount of money;
- (vi) the cheque must specify the name of the drawee;
- (vii) the cheque must specify the place where the payment will be made;
- (viii) the cheque must specify the issuance date and place;
- (ix) the cheque must include the signature of the drawer.

It should be mentioned that, unlike the bill of exchange, the cheque does not include two of the mandatory mentions hereof, namely the specification in writing of the beneficiary's first and last name and the maturity date of the payment obligation. Furthermore, in the absence of the mention regarding the place of the payment or the issuance place of the cheque, the law offers certain remedies in view of maintaining the validity of the title.

4. Transfer of the rights resulting from the bill of exchange

4.1. The endorsement

The endorsement represents the typical way of transmitting rights resulting from the bill of exchange. It must be unconditioned and referring to the whole amount. Until recently the endorsement was usually written on the back of the bill of exchange or on attachment hereof, named extension or allonge. Via NBR Norm No. 6/2008 and Norm No.7/2008 implementing a new standard form for bills of exchange, promissory notes and cheques, the endorsement is written on the front of the bills of exchange, promissory notes or cheques. It is valid even if the beneficiary (endorsee) is not specified on the title, provided that there is the signature of the transferor (endorser).

The endorser acquires the right to cash the amount provided in the bill of exchange, but unlike the debt assignment, its right is autonomous, meaning it may not be opposed by the debtor in the bill of exchange with the exceptions resulting from the relations hereof with the drawer or with other previous holders of the bill of exchange, except for the case when the endorser has knowingly acted for the debtor's loss.

There are certain endorsement options by which the exchange rights are only partly transferred. Thus the endorsement may be transferred with a “for proxy” clause or with an equivalent clause, in which case the endorsee will represent the endorser in exercising the exchange rights.

In case the bill of exchange is intended for use as a pledge, the endorsement may be done with the mention “value in pledge” or another equivalent.

The bill of exchange may also be endorsed after the maturity date. In case the endorsement takes place following the protest for failure to pay or at the expiry of such term, it will be reputed to have the effects of a debt assignment.

As a principle, the endorsee will be liable to all subsequent endorsee in case the acceptant drawee (the issuer, in the case of the promissory note) does not fulfill its obligation. Such a consequence may be removed by inserting the “no appeal” clause or of another equivalent in the endorsement.

The rules applicable to the endorsement of the bill of exchange are also applicable to the endorsement of the promissory note.

Also by endorsement may be transmitted the stipulated cheque payable to a specified person, if the cheque includes the express clause “on demand” or in the cumulative absence of this clause and of the contrary express clause “not on demand”.

4.2. Debt assignment

Usually, in accordance with the Civil Code, the rights regarding the payment of an amount are transferred by debt assignment. The bill of exchange or, if the case may be, the promissory note may be usually transferred by debt assignment when the endorsement is not possible, respectively in the case of a title issued with the “not on demand” clause or when the transfer takes place after the conclusion of the protest for failure to pay or after the expiry of such provided term. Unlike the endorsement, the debt assignment may also take place by a deed separated from the bill of exchange.

The transfer of the bill of exchange by debt assignment presents advantages for the acceptant drawee, because in this case he will be able to oppose the holder all the defenses the latter could raise towards any of the successive holders of the bill of exchange, which, in principle, is not possible in case of endorsement.

The debt assignment provided by the Civil Code is also applicable in the case of transferring the cheque including the name of the beneficiary, issued with the express clause “not on demand” or an equivalent clause.

4.3. Remittance

The cheque stipulated with the mention “bearer” or with the mention “or bearer”, as well as the cheque that does not mention the beneficiary may be transferred by simple remittance of the title.

4.4. Acceptance

The acceptance is the deed by which the drawee to whom the drawer's order of payment has been addressed assumes the obligation to pay in conditions established by the bill of exchange. The acceptance usually takes place by placing the handwritten signature of the acceptant on the front of the title and not via a separate deed. By acceptance, the drawee becomes main debtor with the bill of exchange. The acceptance must always be expressed with the word "accepted" or equivalent idioms such as: "I will pay" "it will be executed". In case such specification is missing, the signature may not be taken into consideration. The acceptance of the bill of exchange may be done by another person than the drawee that can be specified by the drawer or that may intervene at its own initiative.

In case the bill of exchange is not accepted, the bearer of the bill of exchange will see that a protest of non-acceptance is performed.

In the case of the promissory note the acceptance is not necessary, since the issuer has the legal position of the drawee for the bill of exchange.

The cheque, being payable at sight, that is upon the presentation of the title, is not subject to the procedure of acceptance from the drawee. As a consequence, the drawee does not hold the quality of debtor towards the holder of the cheque, the liability for failing to pay the cheque falling on the drawer.

5. The guarantee

The guarantee is the specific method by which an individual, foreign to the bill of exchange or, if the case, to the promissory note, or who is a part of the signatories thereof, named guarantor, guarantees the fulfillment of the payment obligation provided by the bill of exchange. In most cases the guarantor is a bank. The guarantee may be given for the drawee, drawer or any of the successive holders of the bill of exchange, or for the issuer, in the case of the promissory note, and the guarantor will be liable jointly and similarly with the individual it had undertaken to guarantee.

The guarantee is given on the bill of exchange or the promissory notes and is expressed by the words "for guarantee" or others equivalent. The simple signature on the front of the bill of exchange, with no other mention will be interpreted as a given guarantee for the drawer (for the issuer, in the case of the promissory note). As a principle, the guarantee procedure is applicable to the cheque in a similar way, with the difference that a guarantee from the drawee is not admitted.

6. Presentation on payment

6.1. Term

The bill of exchange or the promissory note with the maturity date at sight may be presented for payment any time within a year as of issuance. In case the bill of exchange is due on a fixed day or within a certain interval since the date of the issuance at sight, it must be presented for payment in the maturity day or in one of the two following working days.

The cheque is payable at sight, any contrary provision being considered unwritten. As a payment instrument, the cheque benefits of shorter terms for the presentation on payment of the cheque issued and payable in Romania: 15 days. In case the cheque payable in Romania is issued in another country, the terms are obviously longer: 30 days for European countries, respectively 70 days for non-European countries.

6.2. Procedure

As a principle, the presentation on payment occurs in the place mentioned in the bill of exchange, or, should such a mention lack, at the domicile of the drawee, at the domicile of the acceptant or at the domicile of the person indicated if need be.

In case the payment of the bill of exchange is to take place by bank account, about one week before the maturity date the holder will register the bill of exchange at the bank where holding an account, together with a document named encashing slip. Subsequently, the bill of exchange enters the banking circuit, being presented for payment at the bank where the acceptant drawee has an open account.

In case the bill of exchange is entirely paid, it will be delivered to the drawee. In the case of a partial payment, mention hereof may be made on the title, but it will be refunded to the creditor with the bill of exchange.

The procedure for cheque payment is similar. In order to execute a valid payment, the drawee must verify the fulfillment of all formal conditions of the cheque, as well as, in the case of the cheque that may be endorsed, the regularity of the endorsers' succession.

The payment of the cheque may be entire or partial, in this last case, the drawee having the possibility to put on the document a mention for partial payment, also issuing the invoice.

Pursuant to the recent amendments brought to Law No. 58/1934 and Law No. 59/1934, bills of exchange, promissory notes and cheques may also be electronically processed according to the operation called "truncation" (in Romanian: "*Trunchiere*"). If truncation cannot be performed, the cheques, bills of exchange and promissory notes may be processed on an inter-banking basis, pursuant to the structure of the central clearing house located in Bucharest or by submission of the original copy for collection, directly to the drawee credit institution or to the beneficiary credit institution, as the case may be, according to the procedures set forth in the agreements concluded between the relevant credit institutions.

In case the processing via truncation is not possible due to the paper not having a good material state or the mentions thereof not being legible, the payment will be done via manual processing, i.e. by submitting the original of the bill of exchange, promissory note or cheque at the drawee credit institution.

6.3. The effects of failing to present on payment

In case the bill of exchange is not presented for payment, the debtor of good faith may record the due amount to the Romanian Savings Bank ("CEC Bank"), filing the receipt to the court of the place of payment.

After the expiry of the fixed terms for the presentation of a bill of exchange at sight or within a certain interval since the sight or for the presentation on payment in case the bill of exchange includes the provision “no expenses”, the holder loses the rights against all of the debtors and creditors with the bill of exchange, except for the acceptant (the issuer, in the case of the promissory note) and for the guarantors hereof.

For the cheque, failure to respect the presentation terms does not lead to the loss of the beneficiary’s right to demand the drawee to pay the amount, which may be put to value within the prescription term, but only to the loss of the regress right against the endorsers and the endorsees.

7. Procedure in case of failure to pay

7.1. Protest for failure to pay

The protest for failure to pay is the authentic document proving the non payment of the bill of exchange or, if the case, of the promissory note or of the cheque.

In the case of the cheque, the refusal to pay may be certified whether by a protest for failure to pay, or by a declaration of the drawee, written and dated on the cheque, or by an official dated confirmation from a compensation office.

a) Terms

The protest for failure to pay of a bill of exchange payable on a determined term, or on a certain term since the date of issue or on a certain term since the demand is drafted in one of the two working days following the day when the bill of exchange is payable. When the bill of exchange is payable at sight, the protest may take place within a year since the date of issue of the bill of exchange.

The bearer must notify the endorser or/and the drawer about the failure to pay within four working days following the day of the protest or of the presentation, when the bill of exchange includes the clause “with no protest”.

In the case of the cheque, the refusal to pay of the drawee opens the way of the regress action against the endorsers, the drawer and of the others obligated to regress. For the exercise of the regress action, the cheque should have been presented for payment in due time, and the refusal to pay should have been certified according to the law. In its turn, the protest or the equivalent certification must be fulfilled before the expiry of the presentation term.

b) Procedure

The protest is drafted by the bailiff or by the notary public. The text of the protest is written, in principle, on an attachment to the bill of exchange or on a separated deed, with the mention of effecting the protest on the bill of exchange. The protest of the cheque may also be drafted at the court of the place of payment, if the domicile/registered office of the drawee or of the individual indicated for payment may not be found.

The protest must be registered in a special register kept in court, and the original counter part of the protest is handed to the holder of the bill of exchange. At the beginning of every week, the courts are mandated to submit to the Chamber of Commerce and Industry of the county or, if the case, of Bucharest, a table with the protests for failure to pay of the bills of exchange of the previous week.

c) Effects of not drafting the protest

There is no obligation for drafting the protest in case the bill of exchange includes the “no protest” or “no expenses” clause or any other equivalent.

If the protest is mandatory, after the expiry of the fixed terms for protest, the holder loses the rights over the debtor and creditor with the bill of exchange, except for the acceptant drawee (the issuer, in the case of the promissory note) and the guarantors hereof.

In the case of the cheque, although the protest or the equivalent certification of the protest were not executed, the holder maintains the right of regress against the drawer. The regress action is prescribed by a 6 months term since the expiry of the presentation term for payment of the cheque.

7.2. Payment Incident Bureau (“PIB”)

PIB is an intermediation center managing the specific information for payment incidents, for public interest, including for the users’ purposes. The specific data for the payment incidents are sent, distributed and put to value based on information, even previous to the payment, included in the registers and caused by acts and facts with fraudulent, litigious potential and/or producing risks for failure to pay, including of the kind to affect the finality of the deduction.

Based on the information received from the declarants, PIB organizes and manages a general file, named the National File of Payment Incidents, which will be structured in distinctive files for cheques, bills of exchange, and promissory notes respectively. The National File of Payment Incidents automatically includes the major payments incidents into another file, named the National File of the Risk Individuals.

Through these files, that may be electronically accessed, the declaring individuals or any natural or legal person may take notice, through banks, of the information regarding the refusals on payment of the instruments (bill of exchange, promissory note, cheque) as well as information regarding the loss, theft, destruction or cancellation of the instruments.

In case of payment incidents generated by issuing of a cheque, the person responsible gets a banking interdiction, for a year, interval in which he or she may not issue new cheques.

7.3. Execution

In case of failure to pay, the bill of exchange, the promissory note and the cheque are deemed by law writs of execution for the capital, as well as for the accessories, interest and expenses incurred respectively. Additionally, Law No. 58/1934 and Law No. 59/1934 provide that bills of exchange, promissory notes and

cheques must be previously rendered enforceable by the judge, i.e. vested with executory formula. Nevertheless, the Romanian Civil Proceedings Code provides that documents representing writs of execution by the effect of law, may be executed without the necessity of investing them with executory formula. Within 5 days from the receipt of the execution summons, the debtor may oppose, on which occasion it may raise exceptions as regards the validity of the title.

The court in charge with hearing the opposition may not decide the suspending of the execution unless the debtor fails to acknowledge the signature, thus being included in the category of forgery or fails to acknowledge the power of attorney of the person who signed the title on its behalf.

8. The procedure to follow if the title is lost

In case of loss, theft or destruction of a bill of exchange or promissory note, the holder may immediately notify the drawee and may request the annulment of the title by an application addressed to the chairman of the court where it is payable.

The chairman of the court, after reviewing the claim and the supporting evidence, as well as the right of the holder, will pass, in the shortest time available, an ordinance whereby, specifying the data related to the title, will declare such null and void whomever may hold it and will authorize the payment after elapsing the 30-day term from the publishing of the ordinance in the Official Gazette, if the title's maturity date is exceeded or is at sight, or within 30 days from its maturity date, if such date is subsequent to the publishing in the Official Gazette of Romania and only if, in the meantime, the holder of the title did not oppose such. The Ordinance will be communicated to the drawee and published in the Official Gazette, upon insistence and on account of the applicant.

This procedure is similar for the cheque, specifying that a cheque issued under the mention „non-transmittable” may not be quashed, but its receiver may ask the drawee and the drawer to replace it with a duplicate.