

THE CREDIT TITLES

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Abstract

The credit titles are a category of documents incorporating the patrimonial right provided in these, such as the person who holds them is the patrimonial right's holder.

The formal (literal) and the autonomy are the most important characteristics of credit titles.

Debt securities are formal in the sense that birth, existence, circulation and the exploitation of property rights that incorporate submitted depend on the one obliged to fulfill certain conditions as implemented, through a series of mandatory.

The autonomous right is given by the legal relationship, so the title is issued on a fundamental legal raport but who issued the title is not required, based on a fundamental virtue report solely based on the title which he signed. Each new signatory takes a legal position independent getting a new right, original right, and not a right derived from the emitter's one.

Key words:

credit titles, bearer titles, the bill of exchange, the promissory note, endorsement

JEL Codes:

From the point of view of circulation of credit titles (debt securities) are classified as nominative, bearer, at order.

Registered securities include nominal indication of legal rights holder; their circulation is done only with acknowledgment of the issuer because the change must be noted in the register of issue and also on the title. In this case, may be mentioned nominal shares and nominal bonds.

Bearer titles do not include nominal indication of the legal rights holder, he remains anonymous until payment. In this case, may be mentioned bearer share and bearer bond.

The titles known as commercial effects are transferred by endorsement and delivery of material. In this case, may be mentioned the bill of exchange, the promissory note and the check.

Credit titles are, from the point of view of their contents:

-participation debt securities that certifies the holder as associate/shareholder of a commercial company and it gives property rights (to obtain dividends, to obtain restitution of the stakes in case of dissolution) but also non-property rights (to attend general meetings, to vote, to elect and to be elected in the management bodies);

-securities representing merchandise incorporating a real right over a quantity of goods in warehouse or in transport such as consignment note, bill of lading;

-proper credit titles which include the obligation to pay a sum of money determined category they belong to, such as the bill of exchange, the promissory note and the check.

The bill of exchange is a credit title, under private signature, which puts in touch in the creation process three persons: the issuer, the drawee and the beneficiary. Title is set (made) by issuer in his capacity as creditor (lender) which gives order to his debtor, (named) drawee pays a fixed amount at a determined time to a beneficiary, or to his (its) order.

The bill of exchange must fulfill the form conditions and content required, established by law no. 58/1934 on bills of exchange and promissory notes.

The bill of exchange must be entirely filled in, in ink or pen, in blue or black or by typing. The manuscript mentions will be completed in block capitals, only for the amount that is possible, with the use of lowercase for writing.¹

The bill of exchange is a formal title because of the conditions under they have to be written, in formulas established for the title to be valid. The expressions used in the bill of exchange and the conditions express clauses with strict legal value.

The bill of exchange must contain the mentions stipulated in law to provide sufficient information about the liabilities of cambial assumed parts.

The mentions of the bill of exchange are :

1. the name of bill of exchange inserted into the title and expressed in the language used for its drafting;
2. the unconditioned order to pay a certain amount of money;
3. the drawee's name, consisting of names and surname completely of individual person, or name of the legal person (trading company). If the drawee's name is bigger than the space allocated will write the first characters of the name on the

bill of exchange in the limit of the special space allocated. This does not cause the nullity of the title.

4. the unique number of identification for legal registration to the company of the drawee ;

5. date on which payment must be made;

6. place of the payment;

7. the name of the person (beneficiary) of whose order, the payment has to be made ;

8. the issuance place and date ;

9. the drawer's signature.²

For the response to the needs of commercial and financial practice, in a text it could be put optional conditions based on the agreement from the persons who put the signature on it.

The drawer's signature must include the name and surname completely of individual person, or name of the legal person (trading company) and handwritten signature of individual person or legal representative of company (the stamp is not required).

The banks and National Bank of Romania do not accept in their operation bill of exchange which do not meet with all the mentions stipulated in law. According pct.38 of no.6 Normative of National Bank of Romania are a few exceptions: when the date on which the payment must be made is not mentioned the bill of exchange is payable at sight, when the place for the payment is not mentioned place of payment shall be deemed the place of residence of the drawee and when the place is also not mentioned shall be deemed the place next to the drawer's name.

The issuance date of the bill of exchange must be unique, possible and

certain, even if on the title are more than one drawer. Issuance date is needed to allow calculation of due date, for a finding of legal capacity for the person who applies the signature on title and for subsequent legal action protest and regression.

Under the art.6 from Law no.58/1934 on bills of exchange and promissory notes if the amount written in words is different from amount in figures, the payment must be done for amount in words.

The white bill of exchange is the title that has only the drawer's signature and sometimes some mentions stipulated in law on bills of exchange and promissory notes. The mentions must be filled in on the title from the owner (beneficiary) before to be put into a bank for payment. It is imperative that the name of beneficiary to be written on the title when the payment is requested.³

From the point of view of the payment terms, the bill of exchange may be payable on sight, at a certain time after sight, at a certain time from the date of issue, or at fixed date (maturity).

The bill of exchange, payable on sight, is payable on presentation. This action and the non-payment protest is possible in one year from issuance date.

The maturity of a bill of exchange payable at a certain time after sight or after issuance date is calculated as is specified in months, half months (15 days), or days beginning with the date of issue or sight. Payment or non-payment protest can be made on the due date or in the next two working days.

The maturity respects the calendar of payment place and the payment, or non-payment protest can be made on the due date or in the next two working days.

The promissory note is a credit title, under private signature, which put in touch in the creation process two persons: issuer and beneficiary. Title is set (made) by issuer in his capacity as debtor who must pay a fixed amount at the determined time to a beneficiary, who is creditor.⁴

Generally, the promissory notes follow the rules provided for the bill of exchange.

The essential terms included in a promissory note are:

1. the name of promissory note, typed in the title text ;
2. the unconditioned promise to pay a certain amount of money ;
3. date on which payment must be made ;
4. place for the payment ;
5. the beneficiary's name to whom or upon who's order it has to be made the payment ;
6. the place and date of issuance ;
7. the issuer's signature ;
8. the issuer's name, consisting of names and surname completely of individual person, or name of the legal person (trading company). If the issuer name is bigger than the space allocated will write the first characters of the name on the promissory note in the limit of the special space allocated. This does not cause the nullity of the title;
9. the unique number of identification for legal registration to the company of the issuer.⁵

The promissory note that has no indicators of maturity is payable on sight and may be presented for payment one year from the date of issuance. After this period shall lose their right to non-payment protest and the recovery legal way.

If the place for the payment is not mentioned on the promissory note, place of payment shall be the place of issuance or the place next to the the issuer name. If the place of issuance is not mentioned may be considered the place of signed, place wrote next to the name of the issuer.

The promissory note has an formal character and the title is null if one of essential terms according to art. 104 Law no. 58/1934 on bills of exchange and promissory notes is missing.

The endorsement is the mention by which the title owner, called the endorser, transfers to another person called endorsees all rights arising from the title, thru the declaration written and signed on the title by the endorser.

If the issuer writes on the title the words "not on order", the title is transferable only in form and with the effects of an ordinary assignment of debt.

Like the endorsement, the assignment of debt is a specific means of transmission of the obligations, based on the consent of the will (contractual). The creditor (called the transferor) voluntarily transfers against payment or free, his own rights to another person named assignee which will become the lender of their own place and can receive the debt from the debtor.⁶

The endorsement can be made for drawee, issuer and any other required, which in turn may re-endorse the bill of exchange or the promissory note.

The assignment of debt becomes enforceable from the moment of the notification to the debtor or the moment when the debtor accepts it as an authentic document.

The regulations about the endorsement apply to the bill of exchange and also to the promissory notes.

The mentions of the beneficiary must be filled in on the white promissory note before the endorsement from owner (beneficiary) or before it gets put into a bank for payment.

The endorsee may be any person who can oblige himself legally. When the endorsee is already obliged to the title and the endorsement is for the drawee or the issuer we have a returned endorsement.

On the title, it can be more than one endorsee, cumulative or alternative. When the endorsees are alternative each endorsee who holds the title can use his rights incorporated in title. When the endoesees are cumulative for apply the rights from the title it is necessary all signature to express the consent of all.

The discount is the endorsement by a comercial bank and is the way for the beneficiary to take the amount of money stipulated in the title before the maturity, through endorsement.

The endorsement must be unconditional so that any condition regarding the endorsement written on the title is deemed unwritten.

The owner of the white bill of exchange can give it to an other beneficiary without his name appearing on the title, may be given in pledge or removed from the pledge before maturity without this operation to be mentioned on the title.

The endorsement transfers all the rights incorporated in the bill of exchange. The owner may fill in its own name and endorse the title, or may fill in the other person name, or may give to a new beneficiary the

title without fill in any name for beneficiary (white endorsement).

The endorsement convey the property of the title and the endorsers are jointly and severally liable for payment to maturity. In case of default at maturity may sue the drawer and may sue on the regress way any endorser.

The owner may waive the guarantee of acceptance and payment from the other endorsers using the expresion without warranty or without liability before the endorsement.

There must be an uninterrupted series of endorsements for the owner to be considered legitimate beneficiary.

The endorser who pays on the regress way, has the has right to remove the endorsements following because the subsequent endorsers are relieved of liability.

Generally, the promissory note follows the rules about the endorsement provided for the bill of exchange.

Under the art.33 from Law no.58/1934 on bills of exchange and promissory notes the payment of bill of exchange can be guaranteed by a downstream for the whole amount or only for a part of it. The guarantee can be given by a signatory to the bill or by an other person.

The downstream is expressed by the words for downstream, followed by the guarantor's signature. If it is not specified the person for whom it is given the downstream, shall be deemed given to the drawer. The guarantor has the same responsibility for the payment like the person for whom are giving the guarantee.

When the guarantor pays the bill of exchange, he obtains all the rights included in it against guarantee and against those

person who are liable under the bill of exchange. The points above about the downstream may be apply also to the promissory note.

The presentation of a bill of exchange or a promissory note to payment is done in an original form. From the 10th of october 2008, the processing of payment instruments is made by truncation (the informational procedure to transfer in electronic form) based on a convention between Romanian National Bank and commercial banks and their adherence to a payments system.

The presentation of a bill of exchange or promissory note to payment by truncation produce the same legal effects as the presentation for payment the original instrument under condition that the instrument to be issued under the law.

The reception moment for the payer credit institution or from the payment system, the electronic information obtained by truncation is considered the legal presentation moment for payment.

The transmission of the electronic relevant information and reproduction of the original instrument image in electronic form for the instrument must ensure them authenticity and integrity by using the technical processes allowed by law.⁷

Total or partial refusal to pay of an instrument presented by truncation is in electronic form and is transmitted by the paying credit institution.

According to the refusal to pay received from the paying credit institution, the beneficiary credit institution who owned the original instrument will write on it:

a. the presentation date to payment, to ascertain whether presentation was made within;

b. declaration of refusal, dated and signed by the legal representatives of beneficiary credit institution.

The points above about presentation to payment of credit instruments may be applied to the promissory note, the bill of exchange and the check.

The mentions on the original credit instruments are the proof of payment refusal. The paying credit institution has the obligation if decided to refuse the payment to transmit enrollment application for refusal to pay to the Bureau of Payment Incidents, no later than the day of the refusal. The refusal will be registered as appropriate in the national file of bills of exchange or in the national file of promissory note. Both files feeds automatically the file-risk individuals with payment incidents registered on name of individual person, or name of the legal person, to avoid further incidents later.

In order to recover the amounts set by the beneficiary, he may launch a direct or a retrogression bill of exchange action against the drawee and its guarantors.

The owner may exercise his rights for retrogression against the endorsers, the drawer or to other obligated parties.

The notice payment of a valid bill of exchange must be presented in two days after the validation is made.

The owner may exercise his retrogression right, after the bill of exchange was presented to the drawee and after the notice was made.

The owner must inform his endorser and the drawer about the unpaid bill, in four labor days tops after receiving the notice. Every endorser must acknowledge the notice existence in two days tops. The same acknowledgement must be made by the guarantor as well. The stated days are taken into consideration since the receiving of the notice. Any address mistakes will make the former endorser responsible for the payment of the bill.⁸

The drawer, the endorser and the guarantor are considered on the same level to each other in front of the beneficiary, who has the right to follow course against them, individually or collectively. The same right may be exercised by any other beneficiary.

The launched action against one of the obligated parts doesn't interfere with the possibility of going after the others as well, even if they weren't involved, past the mistake event.

The owner may ask on retrogression way, the amount written in the bill of exchange, unpaid or unaccepted, along with the interest, starting from the purge date, if it was stipulated ; also the incurred expenses, or any other justified expenses.

In the case when the bill of exchange is not presented to acceptance in due time set by the drawer, the beneficiary will lose the right to retrogression, for both unpayment and unacceptance.

¹ Framework Norm National Bank of Romania no.6/1994 regarding the trade made by the commercial banks and the credit institutions with the bills of exchange and the promissory notes, Regulations issued by the National Bank of Romania, art.4 and art.7

² Legea nr.58/1934 asupra cambiei și biletului la ordin art.1 completat prin Legea nr.163/2009 Law no.58/1934 on bills of exchange and promissory note, Official Monitory of Romania no.100 from 01.05.1934, art.1 amending and supplementing with Law no.163/2009, Official Monitory of Romania, Part I, no.322 from 14.05.2009

³ Framework Norm National Bank of Romanie no.6/1994 regarding the trade made by the commercial banks and the credit institutions with the bills of exchange and the promissory notes, Regulations issued by the National Bank of Romania amended with the Norm of National Bank of Romanie no.7/2008, Official Monitory of Romania, Part I, no.512 from 08.07.2008, art.71

⁴ Framework Norm National Bank of Romanie no.6/1994 regarding the trade made by the commercial banks and the credit institutions with the bills of exchange and the promissory notes, Regulations issued by the National Bank of Romania, art.71

⁵ Law no.58/1934 on bills of exchange and promissory note, Official Monitory of Romania no.100 from 01.05.1934, art.104 amending and supplementing with Law no.163/2009, Official Monitory of Romania, Part I, no.322 from 14.05.2009

⁶ Framework Norm National Bank of Romanie no.6/1994 regarding the trade made by the commercial banks and the credit institutions with the bills of exchange and the promissory notes, Regulations issued by the National Bank of Romania, art.81

⁷ Law no.58/1934 on bills of exchange and promissory note, Official Monitory of Romania no.100 from 01.05.1934 art.46 amending and supplementing with Government Emergency Ordinance no.39/2008, Official Monitory of Romania, Part I, no.284 from 11.04.2008

⁸ Law no.58/1934 on bills of exchange and promissory note, Official Monitory of Romania no.100 from 01.05.1934, art.49-50