



DOI: <https://doi.org/10.15688/lc.jvolsu.2017.1.15>

UDC 347.457.1

LBC 65.272.21

BILL AS SETTLEMENT AND CREDIT INSTRUMENTS: PAYMENT, GUARANTEE OF AMORTIZATION, REGRESS

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Introduction: the bill is a security, the amortization of the financial liability is against the only bill, that creditor exhibit to debtor. Exactly the creditor must apply with the original bill to the debtor to amortize the obligation, because it is impossible to reverse. The place of amortization the financial obligations of the bill is the domicile. Failure to present a bill for payment at all, implies the cessation of obligations only regress (spare) debtors, however, the main financial obligation of the debtor – the acceptor of a bill of transfer or the ordinary bill continues to exist. Transferable promissory of the bills increased due to the fact, that the payment of a bill may be provided (financially backed by, guaranteed) by surety. **Intention** of research – to reveal the rules of payment, guarantee of amortization, regress on the bills. **Methods** used in combination methods of scientific knowledge, including basic – methods of historicism, systematic analysis and comparative law. **Results:** payment is done properly the payment of the entire bill's amount, the non-payment of the amount equivalent to denial of payment for this part. When a bill is submitted for payment, but it does not pay the debtor, the creditor may request the bill from him in court as the debtor owns them illegally. After receiving the bill back to the creditor, the billholder is able to exercise their rights in relation to regress (spare) debtors. End of the bill's financial liability possibly even on the grounds that correspond to civil law: it can be a ladder of counter-claims, as well as the provision of compensation. Commercial banks are the most active subjects bill relations. **Conclusions:** payment of a bill must be promoted properly, then the promissory bill's financial liability ended. Payment of a bill can be provided surety all or part of the bill amount, which reflects the clear text while writing this surety.

Keywords: billpromiser, creditor, reckoning, date, billholder, bill amount, surety, backer, recourse debtor.

УДК 347.457.1

ББК 65.272.21

ВКСЕЛЬ КАК РАСЧЕТНО-КРЕДИТНЫЙ ИНСТРУМЕНТ: ОПЛАТА, ОБЕСПЕЧЕНИЕ ИСПОЛНЕНИЯ, РЕГРЕСС

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Введение: вексель является ценной бумагой, исполнение финансового обязательства осуществляется против самого векселя, который предъявляется должнику кредитором. Именно кредитор должен обратиться с подлинником векселя к должнику для исполнения обязательства, потому что обратное невозможно. Местом исполнения вексельного финансового обязательства является место платежа по векселю. Непредъявление векселя к платежу вообще влечет прекращение обязательств только регрессных (запасных) должников, однако финансовое обязательство основного должника – акцептанта переводного векселя или векселедателя простого векселя продолжает существовать. Оборотоспособность векселя повышается благодаря тому, что платеж по векселю может быть обеспечен (финансово подкреплён, гарантирован) посредством авалья. **Цель** исследования – раскрыть правила оплаты, обеспечения исполнения, регресса по векселю. **Методы:** применены в совокупности методы научного познания, среди которых основные – методы историзма, системности, анализа и сравнительно-правовой. **Результаты:** обосновано, что должным образом платеж совершается при уплате всей вексельной суммы, неуплата части суммы равносильна отказу в платеже на эту часть. Когда вексель передан для оплаты, но должник его не оплачивает, кредитор может истребовать вексель у него в судебном порядке, поскольку должник владеет им незаконно. После получения векселя обратно кредитор-

векселедержатель получает возможность реализовать свои права в отношении регрессных (запасных) должников. Прекращение вексельного финансового обязательства возможно еще и по основаниям, которые соответствуют гражданскому законодательству: это может быть зачет встречных требований, а также предоставление отступного. Коммерческие банки являются наиболее активными субъектами вексельных отношений. **Выводы:** платеж по векселю должен быть произведен должным образом, тогда вексельное финансовое обязательство прекращается. Платеж по векселю может быть обеспечен авалем полностью или в части вексельной суммы, что отражается явным текстом при написании такого авала. При этом аваль может выдаваться как за основного должника – векселедателя простого векселя или акцептанта переводного векселя, так и за любого из регрессных должников.

Ключевые слова: векселедатель, кредитор, расчет, срок, векселедержатель, вексельная сумма, аваль, авалист, регрессный должник.

Introduction

In author's articles about securities, we investigated the securities in which investments entail the formation of proprietary investor communication with an organization receiving such investments [1; 3–5]. Then we noticed figuratively called debt securities, they are quite capable to turn around and represent the entrepreneurial interest, both for collective and for individual investors [2; 6–8]. We next consider the settlement the credit and trading securities. A classic representative, of which, is undoubtedly the bill [9].

European rules of bill's turnover were accepted by Soviet law about 80 years ago, 20 years ago it rules has been fully extended to the bill's relations in modern Russian federal law [11]. The regulation of these relations is carried out exactly according to the Standing order, which is an almost literal translation by «Convention about Uniform Law about ordinary bill and bill of transfer» (concluded in Geneva on 06.07.1930). This document came into force on 1 January 1934. For the USSR, the document came into force on 23 February 1937 [10].

Payment of a bill

Bill's financial liability normally and without conflict ended by payment of a bill. Most important is the fact of its presentment for payment. The initiator of the execution of the obligations in favor of the bill creditor, while in the other it is a debtor liabilities. Bills turnover is such that the debtor simply can't know, where the promissory bill payable, so the creditor debtor finds himself, to present him the bill for payment.

Since the bill is a certificated security, the financial liability of the execution is carried out

against the bill, that is the creditor exhibit to the debtor. That creditor must apply with the original bill to the debtor to amortize the obligation, because it is impossible to reverse.

In other (not bill's) spheres of financial and economic turnover the place of amortization of a monetary obligation is the place of the creditor. The place of amortize of the bill's financial obligations is the domicile. Moreover, failure to bill for payment at all, implies the cessation of obligations only regress (spare) debtors, however, the financial commitment of the main debtor of the ordinary bill acceptor or the bill of transfer continues to exist.

It established a strict rule that the bill creditor must present a bill for payment in the calendar day specified in the text of the bill payment term of either one of the following two business days. If a bill has a term of payment «in so much time on the preparation of», «in so much time on the presentation of», «in so much time from the occurrence of the event», the payment date shall be determined net of the day, which begins during the term. It does not apply to bills with the established payment period «on demand». It would seem that such a bill may turnover indefinitely, but against this it provides a limitation in 1 year from the date of drawing up the bill.

By following the day on which the bill must be presented for payment, you must choose the right time for this day, namely – during working hours, with the presentation's act should take place in the place of payment, which should be specified in the text of the bill is definitely enough as the address of a particular room. In this act involved: the person to whom the bill is presented for payment – principal debtor under the bill, namely – acceptor in a bill or transfer, payer in a ordinary bill; a person, who is authorized to present

a bill for payment and has the right to demand payment – billholder. It clearly shows the fundamental difference from the presentation of a bill of transfer for acceptance, since it can be made by any representative of the bill's creditor. It is possible that the plurality of persons on the side of the debtor under the bill, this group of payers (the acceptors) is considered as a single debtor, bill is presented one of them to choose from a billholder. In our opinion, the presentation of a bill for payment by mail is not allowed.

Failure to present a bill for payment, as well as the presentation of a violation of the rules, lead to adverse consequences, for the billholder. In addition, he is left alone, and regress debtors responsibility ended, pass the day of presentation bill for payment eliminates the possibility to require the payer's payment of interest rate and penalties, if the payer has delayed payment on the bill. Force majeure are justification for the delay presenting a bill for payment, at the end of it, bill must be presented for payment immediately.

There are special circumstances, the presence of which does not involve the cessation of regress debtors liability, if the bill is not presented for payment, namely:

- a complete or partial refusal of acceptance;
- failure of the payer, established by the court;
- the lack of results from the repossession of property of the payer;
- failure of the billwriter, which is not subject to acceptance;
- the duration of force majeure within the period of 30 days.

Payment of a bill must be promoted properly, then the bill's financial liability ended. Duly payment is made only by the debtor only to the billholder. It allowed an exception – a payment on the order of mediation by any of regress (spare) debtors. The payment of vested right to claim from the other regress (spare) debtors return the amount he spent.

Duly payment is made for the payment of the full amount of the bill, non-payment of the amount equivalent to denial of payment for this part. Payment is possible exactly the amount of money, other equivalent provision, of the same value, are not allowed. It is necessary to pay right on the day of payment, the billholder can not be compelled to receive payment before, even if he

agrees, paying in advance makes it at your own risk. The payment will entail the end of the bill's financial liability, if the payer conscientious – not committed fraud or gross negligence. For example, he paid, although he was aware, that there is a forbidding payment judicial act, or knew that the bill is kidnapped, and the recipient of money under the bill owns illegally, or not checked the correct consistency and continuity of the series of endorsements. Very gross negligence of the payer is the omission of the payer to demand the bill against of payment, if the bill is also not a mark of committed payment, or billholder did not leave earlier receipt for cash.

The financial and economic practice, the payment of a bill, often carried out in non-cash form. Non-cash transaction takes some time: verified the authenticity of bill, issued the payment order to the bank, the amount of money transferred from the payer's account to the account of the billholder. When a bill is submitted for payment, but the debtor does not pay it, the creditor can claim the bill from him in court as the debtor owns them illegally. After receiving the bill back creditor-billholder is able to exercise their rights in relation to regress (spare) debtors.

Ended of the bill's financial liability possibly also on the grounds that correspond to civil law: it can be a ladder of counter-claims, the provision of compensation, debt forgiveness.

Guarantee to payment of a bill

In addition to the previously noted adding, that the bill's transferable increased due to the fact, that payment of a bill may be provided (financially backed by, guaranteed) by surety. The issuer of surety with the intention to ensure payment of a bill, called – backer. You can select their varieties:

- backer, foreign for the bill's relation – the third party – not the billholder, not the endorser;
- backer involved in bill's relation. They can perform any of the endorsers, which is one of the debtors under the bill.

Writing surety possible on the bill or on the allonge, it permitted the commission of surety on a other document. Surety given under the condition is regarded as non-existent. Payment of bill is the backer purchase their claim against the person for which is given surety and purchase

requirements for each a regress debtor to the person for whom given surety.

Payment of a bill can be provided surety all or part of the bill amount, which is reflected explicitly in writing the text of the surety. This surety may be issued both for the principal debtor – the billwriter of ordinary bill or the acceptor of a bill of transfer, and for any of the regress debtor. Surety on the bill issued for the principal debtor, entails the following:

- the requirement to pay the guarantor could be required on the day of payment on the bill regardless of such request the principal debtor;
- the requirement of the specified backer three-year bill extends the statute of limitations.

Surety on the bill issued for regress (spare) the debtor, backer entails joint and several liability with other regress debtors:

- the requirement to pay the backer could be required in the same order as other regress debtors;
- the demand to said backer extends one-year term limitation bill set for regress debtors.

The text of the surety must specify for whose account issued surety, that is, a commitment because of the debtors under the bill provided surety. If such an indication in the text have considered, that surety issued for most of the drawer. There are two possible signs of surety:

- words indicating the intention to provide a debtor's obligation to the bill, such as «good as surety»;
- backer's simple signature without any text on the front of the bill.

For operations to ensure payment of a bill should include bill's mediation. It is intended against the negativity that arises from the refusal of acceptance or bill payment on it. Therefore, in the bill, you can specify any persons, to whom should contact for non-acceptance or non-payment of a bill. Also allowed the acceptance and payment completely unauthorized person, generally did not have obligations under this bill. In this connection it may be mentioned that about 4–5 centuries ago in bill's circulation was fixed the term «mediation for the honor». Bills mediation, thus, is aimed at protecting trade honor, those persons whose reputation may suffer due to non-acceptance and non-payment of bills.

Appoint a mediator have the right the billwriter, an endorser (regress debtor) and backer.

In practice, if anyone from the recourse debtor appoints a mediator (gonorant), to which to appeal for non-acceptance or non-payment, and writes his name in the bill, such mediation is called gonoratsiya. Mediation is voluntary, without this purpose is called intervention.

It is also possible to order acceptance and payment mediation through mediation. Acceptance through mediation must be written on the bill of exchange and signed by the intermediary, to be specified – at whose expense committed acceptance. As a result, the acceptor-mediator has a duty to pay the bill, equal to the duties of the regress debtor, for whom accept the bill. The acceptor-mediator responsible only to billholder and those persons, who involved in the bill after the person for whose honor was accepted by the bill. At the same time on the acceptor intermediary obligations apply the terms of the bill of limitations for regress debtors, therefore, the billholder is entitled to demand payment from the acceptor-mediator within 1 year from the date of maturity.

Payment through mediation can take place on the grounds non-acceptance bills, the payer's insolvency, inconclusive repossession of his property. Payment must be committed precisely to the extent that any obligation to pay the person, an honor which the mediator and provides the payment. Term of payment – not later than the day following the last day, set for the protest of non-payment of a bill.

For the payment, as well as for the acceptance, the billholder must present the bill acceptor-mediator or payer-mediator in place of its location, which coincides with the place of payment. If multiple mediators are in the place of payment, the holder must present the bill to all of them. Intermediary, paying a bill becomes a requirement to the person for whose honor he has stood up to its delivery, as well as the requirements for those debtors who in turn owe this person.

Regression of a bill

For bills properties, reinforcing its high quality of the negotiable instrument, refers bill regression – the billholder's right for non-payment to them in a standard order from the principal bill's debtor receive financial satisfaction from other debtors

are, obliged under the bill. It can be realized only by the existing bill's rules, development which has taken quite a long time.

Historically, the first was a system of gradual regression of the bill. If non-payment bill of the principal debtor billholder could demand payment of regress debtors, since the last bill in the endorser, followed by its predecessor, and so on «up the chain». This system was characterized by a great inconvenience for the billholder, because «another chain» regress debtor may be in a place very distant from where he is the billholder. During the gradual development of the system developed into a system «to jump» (*per saltum*), in its part of the holder is not obliged to adhere to the sequence of the «movement chain» upon presentation of their claims to regress (spare) debtors. The modern system «to jump» allows to the billholder in its sole discretion to make the demands of his choice: to one of the regress debtors, or all at once – the joint debtors.

In order to regress have the right to file a claim:

- billholder;
- regress debtor, he paid the bill by way of regress.

Billholder will demand payment of the bill by way of recourse, if instead receive payment:

- refusal of surety. Non-surety (refusal of surety of bills of exchange) – is the surety of express acceptance within the prescribed period after the date of presentation of the bill for it. Non-surety, of course, covers all the inscriptions such as «will pay in the near future», «guarantee payment within a week», etc., as well as the actual failure payer no inscriptions in the period fixed for surety;

- failure to pay at maturity. Failure to pay – it's a fact of non-receipt of money on the day of maturity;

- circumstances that give reason to sue until the due date on the bill. Among these circumstances: the failure of the payer, termination payments of the payer, futile foreclosure on the property of the payer, showing that the assumption that the bill is paid in due time will not.

Regress debtor, he paid the bill, thereby acquiring the right to demand the payment of the amount spent from all previous endorsers in any order or all of them simultaneously.

Pre endorser (the debtor by way of regress) becomes obligated on the bill from the moment of its signing. In fact, the requirement in the order

of regress can be presented to him at the non-surety or non-payment – a negative, conflict development bill's financial relationship. This bill is bad, a flaw or defamed. This negative fact – non-surety, failure to pay, lack of surety date – should be fixed, than regress debtor's responsibility there is real and maintained. Practically:

- the fact of profane bill (protest);
- this fact is informed regress debtor (notification).

It should be clarified that the failure to protest does not affect the right of the billholder to demand payment from the principal debtor. The need to protest is not at all, when the bill regress debtors absent, and involves only the principal debtor. Protest of a bill in connection with its non-surety is made within the deadline set for submission for surety [9].

Protest of a bill in connection with the default on it, which is set maturity «at sight», to be committed in the course of 1 year from the date of drawing up the bill. Billholder may, in its sole discretion to vary the period of the protest. If the bill is set another date of payment, protest it takes place within 2 working days after the due date.

Notification – this (note the word) message for regress debtor, that there was a non-surety or the fact of non-payment of a bill. Report about outstanding the billholder in writing directs his endorser, from whom he received the bill, and the billwriter. Every endorser who participates in the bill, should send a notification to its predecessor, so the message «up the chain» will reach the billwriter. Notification period is set to 4 days after the date of receipt of the bill profane message. If any of endorsers not sent the above message in time, he is liable for damages that may be due to his negligence.

In the financial requirements stated billholder in the order of regress for the overdue bill, integrates:

- bill's amount;
- interest rate and penalties for non-payment of bills to come a day of payment;
- the costs of the protest, on notification, and other costs.

The federal law [11] found that the interest rate and penalties paid in the refinancing size of the Bank of Russia, according to the rules of art. 395 of the Civil Code of the Russian Federation.

In the financial requirements stated in the order of regress paid the bill endorser (regress debtor), integrates:

- the amount actually paid to them;
- the interest rate for non-payment of bills of exchange on the day of payment;
- costs incurred.

For both of these applicants of financial requirements must clarify the possibility to present recoverable not all, but only those costs which are necessary for the protest of the bill.

If you will take some time, and the bill will not be presented for payment, the requirement of the billholder shall be canceled. In this regard, in the bill's circulation developed the so-called bill's prescription, bringing together three groups of terms:

- prescription of the request to the principal debtor – the acceptor of bill of transfer or payer of ordinary bill – 3 years from the date of maturity of a bill;
- prescription of the request the billholder to regress debtors-endorsers and the holder by bill of transfer – 1 year from the date of maturity of a bill;
- presentation of the prescription requirement regress bill's debtors to each other – mutual claims of the endorsers and the writer by bill of transfer – 6 months. If an endorser for the resulting bill is itself a regress debtor, 6-month period shall begin on the date of payment of a bill. If an endorser has paid the bill by way of regress, 6-month period shall begin on the date of submission to his lawsuit.

Results

The financial and economic turnover of various companies and firms use the bills in the calculations instead of money, that at the end of the bill relation still paid. Bill is very widely used by commercial banks as a credit instrument. Such operations have an added convenience for banks, due to the fact, that there is no need to issue credit agreements, giving cash, non-cash money transfer, because the use of the bills.

Accounting bills. Billholders, in need of money and not being able to wait for the due date on the bill, it passes by endorsement to its commercial bank before maturity. The holder does not receive the entire bill amount, and minus a certain amount – discount. This amount of

deduction may be regarded as interest payment for the resulting virtual bank loan.

The loan secured by promissory bills. The borrower, negotiating with the bank for a loan of money, in most cases, reinforces its financial solvency guarantee of liquid assets. The fully to such property could be traced securities, including – bills.

Bills credit. The borrower, who has repeatedly received, in due time and in full repay the loan in your bank, can negotiate with the bank for a loan without collateral and without crediting him the loan amount. In order for the borrower had the opportunity to settle accounts with its partners in any geographic location, he draws the obligations to pay the received from partners goods, works and services with their bills, that advance surety bank for a total amount of credit granted. Suppliers of goods, works and services, within the terms established in the bills is presented it in the bank, where bill's credit is opened. The deadline for the submission bank pays bills to suppliers from the amount allocated to the borrower the loan, from that day on the amount of the loan starts accruing interest rate on the loan. Then, the borrower repays the loan amount to your bank and the amount of interest rate under the contract of the bill's credit.

Bills forfeiting. The company selling the goods for export, it may be shipped overseas without paying, payment obligations under foreign partner, importing goods in their country, which will be formalized on bill. Company-billholder endorses bill to the bank with the words «without regress to the seller», this means that all the problems and risks associated with obtaining bill amount, bank forfeiter incurs. Of course, it will affect the discount from the bill's amount, which is the subject of negotiation between them. On the day of maturity of a bill, it security is presented importer debtor on behalf of the bank. It bill is accepted initially this importer, moreover, without regress to the vendor. This bill is of interest to commercial banks for the opportunity to make a profit in the forfeiting transactions.

Collection of bills. With billholder, which is the client of the bank, the operation of collecting bills can be carried out. To do it, the instrument is made on the bank's endorsement by agent name with the wording of the «currency for collection». Then the bank (he is not paying for it) sends the

resulting bill to the bank, where there is the account of the payer on the bill, and notify the payer of a bill that it passed a bill «for collection». In this operation, the bank acts as a commission agent, in its own name but at the expense and in the interests of his client, the customer pays the bank a commission in advance a certain percentage of the amount actually paid by the payer on the bill.

Domiciliation of bills. Billwriter, following prior agreement with the bank, it may appoint payer on the promissory bill. In contrast to the operation of collecting bills bank will act not by the recipient, but payer money. It should be clarified, that it is not availing bills of exchange by the bank, the bank undertakes to pay the bill by the due date only at the expense of the billwriter, which are available on its account at the bank. If billwriter's bank account cash will not be or will not be enough, responsible will bear the billwriter.

Operation bill's «repó». Operation is similar to the loan secured by promissory notes, but repurchase provided for operation «repó» bill conceived immediately by billholder. Such operations are carried out when a bank customer in the short-term needs of borrowed funds, no plans to sell existing securities. The bank buys the customer bill at below market price, then after a certain period of the parties sells it back to his same customer at a price that is higher than the purchase price.

Conclusions

The ordinary bill is an unconditional promise to pay a sum of money to a person-billholder, drafted and signed the document. The bill of transfer (tratta) – an unconditional offer to pay a sum of money. This proposal is a person-billholder, drafted and signed the document, another person – payer. Payment of a bill must be committed by a third party, or by order of a third person to another recipient. The difference between the ordinary bill from the bill of transfer, that the ordinary bill draws unconditional promise of the payer-billholder to pay a sum of money, and bill of transfer addressed to another earlier unconditional offer from billholder of a cash payment. In the modern market economy it is very widely used presented in this article and in article [9] settlement-credit instrument, allowing, in addition, interest rate on the borrowed amount.

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