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BILL AS CALCULATE-CREDIT INSTRUMENT: CODE OF TURNOVER AND PARTICIPANTS

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Introduction. The modern market economy very widely uses the documentary calculate-credit instrument allowing the accrual of percentage on the borrowed amount, and this security is called an ordinary bill as opposed to a transfer bill. Intensive use of bills in the economic turnover led to the detailed regulation of the rules for their treatment. **Purpose** of the research is to reveal the rules and composition of the turnover of bill's accounting. **Methods.** The author uses the combination of methods of scientific knowledge, including basic ones – the methods of historicism, systematic analysis and comparative legal method. **Results.** It is proved that the bill is an absolute, abstract and strictly formalized promise or offer to pay a sum of money. The difference between an ordinary bill and a transfer bill is that an ordinary bill draws unconditional promise of the payer, the bill drawer pays a sum of money, and the bill of transfer documents is addressed to another earlier unconditional bill drawer's offer of a cash payment. The lack of and / or incorrect execution of at least one of the props of the required information deprives the document of the bill's force. In this case the obligations under the bill of all participants without exception arise due to the signature on the document. **Conclusion.** Bill, both individually and issued on the actual situation, non-equity securities, certifies and contains a property right to receive the said amount in it, such right may only be exercised upon presentation of the most valuable paper.

Key words: certificated securities, loan, bill drawer, creditor, reckoning, term, bill holder, bill amount, endorsement.

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ВЕКСЕЛЬ КАК РАСЧЕТНО-КРЕДИТНЫЙ ИНСТРУМЕНТ: ПРАВИЛА ОБОРОТА, СОСТАВ УЧАСТНИКОВ

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Введение: в современной рыночной экономике весьма широко используется документарное расчетно-кредитное средство, допускающее начисление процентов на одолженную сумму, эта ценная бумага называется простой вексель, наряду с ним существует переводный вексель. Интенсивное применение векселей в хозяйственном обороте обусловило подробную регламентацию правил их обращения. **Цель** исследования – раскрыть правила оборота и состав участников вексельных расчетов. **Методы:** применены в совокупности методы научного познания, среди которых основные – методы историзма, системности, анализа и сравнительно-правовой. **Результаты:** обосновано, что вексель – безусловное, абстрактное и строго формализованное обещание или предложение уплатить сумму денег. Отличие простого векселя от переводного в том, что простой вексель оформляет безусловное обещание самого плательщика-векселедателя уплатить денежную сумму, а переводный вексель документально фиксирует адресованное другому плательщику безусловное предложение векселедателя о денежном платеже. Отсутствие и/или неверное оформление хотя бы одного реквизита из обязательных сведений лишает документ вексельной силы. При этом обязательства по векселю всех без исключения участников возникают в силу подписи на документе. **Выводы:** вексель как индивидуально и по фактической ситуации оформляемая неэмиссионная ценная бумага удостоверяет и содержит в себе имущественное право на получение указанной в нем суммы, такое право может быть реализовано только при предъявлении самой ценной бумаги.

Ключевые слова: документарные ценные бумаги, займ, векселедатель, кредитор, расчет, срок, векселедержатель, вексельная сумма, индоссамент.

Introduction

In a series of our 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.

About eight centuries ago in Italy, the operation of exchange coins, that made money-changers, combining steel with a money transfer to another city. Trading entrepreneur shall pay a sum of money-changers in the same currency, and some time later received it in another geographical location of other currencies. Writing such an operation in the book moneychangers duplicated in a separate document on a sheet of paper, which are subject to trade entrepreneur in the place of location, a written order one banker to another banker to pay the bearer specified in this document amount of money. Later, in France for long mutual settlements came up the document transmitted from one person to another, making the special endorsements on it, only on the back side. In the future, the document became completely irrespective in Germany (abstract) on the relationship between the parties, due to which it originated and which passed through.

In Russia, about 600 years ago, began to apply a similar document, it was called – kabalá (borrowed letter). From the first appearance of his kabalá could be transferred to another person, it can be made to the bearer. For example, in the late 14th century in Constantinople ambassadors Dmitry Donskoy took money from the Italian and Oriental trading entrepreneurs, kabalá was formalized on paper and sealed the Grand Duke.

Development of bill's accounting

In the modern market economy is very widely used represented by the settlement and

credit device, permitting, in addition, interest rate on the borrowed amount, this document is called an ordinary bill, there is a bill of transfer with him. Very intensive use of ordinary bills in the economic turnover led to a detailed regulation of the rules for their treatment. At present, we established two major systems of such rules. One system is based on the Geneva Conventions of bill of 1930, the Russian Federation exchange law apply to this system. Another system is based on English «Law, codified law relating to bills of transfer, checks and ordinary bills» in 1882.

In 1937 the Soviet Union joined the Geneva Conventions, adopted the Regulation on bill of transfer and ordinary bill, approved Resolution of the Central Executive Committee and SNK on August 7, 1937 [9]. In 1997, published the Federal Law of March 11, 1997 № 48-FZ «On bill of transfer and ordinary bill» [10], subject to the rules of this Regulation on the current bill of exchange relations.

Bill - is unconditional, abstract and strictly formalized a promise or offer to pay a sum of money.

Ordinary bill and bill of transfer, nominative and order bill

For example, a bill of fig. 1 shows that in the town of Kamenetz-Podolsk drafted a bill for 100 rubles in silver, according to which Itska Shmulovich Zaveruha six months from February 1, 1896 must pay Shulim Itskovich Blatman, or to whom he orders, 100 rubles in silver, that the debtor – Zaveruha it completely got the goods. This example shows an ordinary bill – the unconditional promise to pay a sum of money to a person - debtor, drafted and signed the document. The payer of a bill here is Zaveruha debtor, the recipient of the payment – Blatman (or a third person, who will order pay Blatman, and the third person will receive money instead Blatman).

Also, as an example, assume that there is a document, which says the following: «Pay a bill of transfer to the Bank «North» 12 million rubles 5 December 2016, payment place – Arkhangelsk, Limited Liability Company «Korund». November

7, 2015, Limited Liability Company «Zvezda», signature of the assignee of LLC «Star» Ivanov.»

This – the bill of transfer – an unconditional offer to pay a sum of money. This offer is a person-debtor, the composition of the bill to another person-payer. And payment must be committed by a third person or by order of a third person to another recipient. In this example, a offer to pay sum of money comes from the debtor – of LLC «Star», this offer to pay is addressed to payer – LLC «Korund», payment must be committed for the benefit of a third person - Bank «North», he is the first billholder. Bank «North» may be ordered to pay anyone to optimize their current payments (fig. 2).

Further, in fig. 3, 4 presents the modern forms of ordinary bill and bill of transfer.

The difference between a ordinary bill of the transfer bill is that a ordinary bill draws unconditional promise of the payer, the billwriter to pay a sum of money, bill of transfer documented fixes addressed to another earlier unconditional billwriter’s offer of a cash payment.

Assessing the strict formality of the bill point out that the bill of transfer is considered to be a document that contains:

- bill’s label (the word «bill», is available in the text in the same language as that of the document);
- a simple and unconditional offer to pay the exact amount indicated;
- the name of the payer, who should pay;

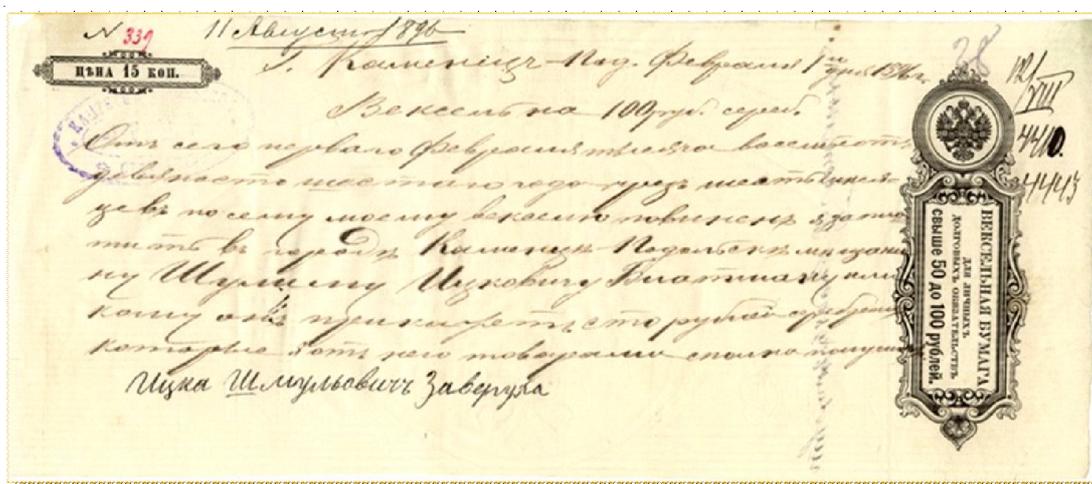


Fig.1. The bill, drawn up by the two citizens at a special paper bill worth 15 kopecks in 1896

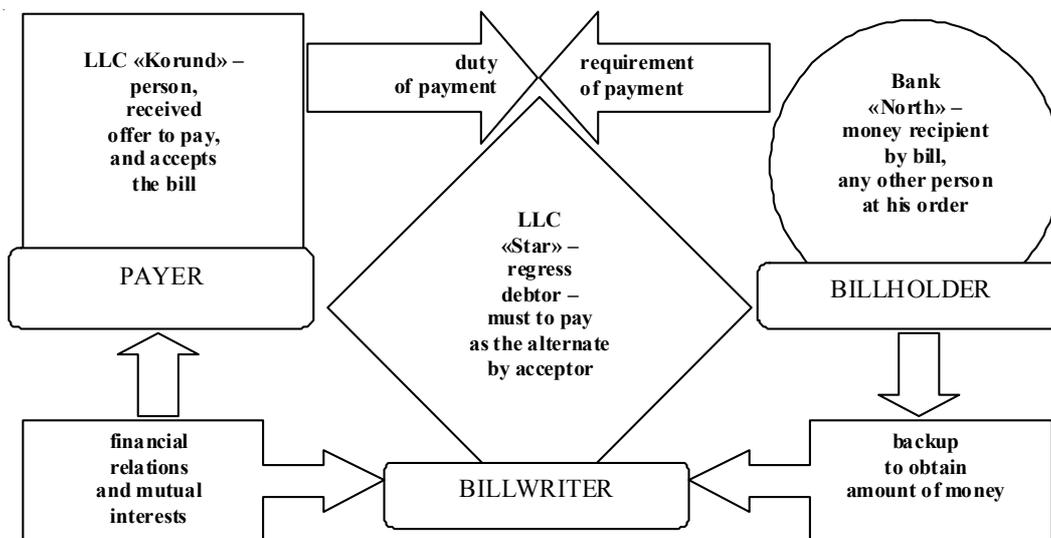


Fig. 2. The relationship of monetary obligations and interests partners of the bill of transfer

ПРОСТОЙ ВЕКСЕЛЬ

Серия _____ На сумму _____ № _____
(цифрами)

Дата, место составление векселя _____

Предприятие (лицо) _____
(полное наименование и полный адрес векселедателя)

обязуется безусловно уплатить по этому векселю денежную сумму в размере _____
(сумма прописью)

непосредственно предприятию (лицу) _____
(полное наименование и полный адрес получателя)

или по его приказу любому другому предприятию (лицу),

Этот вексель подлежит оплате в следующий срок: _____
(по предъявлении,
во столько-то времени от предъявления или составления, в определенный день)

Местом платежа является: _____
(город, село и т.п.)

Руководитель предприятия _____ Главный бухгалтер _____
 векселедателя _____ М.П. _____

ДЛЯ АВАЛИА (вексельное поручительство)
 За кого выдан _____ М.П. _____
 Подпись авалиста _____
 Дата _____

Fig. 3. Blank of ordinary bill for the billwriter - legal entity (the front side)

ПЕРЕВОДНОЙ ВЕКСЕЛЬ (ТРАТТА)

Серия _____ На сумму _____ № _____
(цифрами)

Дата, место составление векселя _____

Прошу предприятие (лицо) _____
(полное наименование и полный адрес плательщика)

уплатить по этому векселю денежную сумму в размере _____
(сумма прописью)

непосредственно предприятию (лицу) _____
(полное наименование и полный адрес получателя)

или по его приказу любому другому предприятию (лицу),

Этот вексель подлежит оплате в следующий срок: _____
(по предъявлении,
во столько-то времени от предъявления или составления, в определенный день)

Местом платежа является: _____
(город, село и т.п.)

Наименование и адрес векселедателя _____

Руководитель предприятия _____ М.П. _____
 векселедателя _____

ДЛЯ АВАЛИА (вексельное поручительство)
 За кого выдан _____ М.П. _____
 Подпись авалиста _____
 Дата _____

ДЛЯ АКЦЕПТА (оригинал к платежу)
 Принял в сумме _____ М.П. _____
 Подпись акцептанта _____
 Дата _____

Fig. 4. Blank of bill of transfer for the billwriter - legal entity (the front side)

- an indication of the date of payment (if the term is not specified, the bill will be considered as paid at the time of submission);

- an indication of the place in which should make the payment;

- the name of the person to whom or to the order who has to make the payment;

- the date and place of the bill, when it signed;

- the billwriter's signature – the person issuing the bill.

A ordinary bill is considered to be a document that contains:

- bill's label (the word «bill», is available in the text in the same language as that of the document);

- a simple and unconditional offer to pay the exact amount indicated;

- an indication of the date of payment (if the term is not specified, the bill will be considered as paid at the time of submission);

- an indication of the place in which should make the payment;

- the name of the person to whom or to the order who has to make the payment;

- the date and place of the bill, when it signed;

- the billwriter's signature – the person issuing the bill.

The lack of and / or incorrect execution of at least one of the props of the above information, the document deprives the power bill. At the same time, a bill commitment of all participants without exception arise because the signature on the document. The bill, as a security, certifies and contains a property right to receive the said amount in it, which can be realized only upon presentation of the paper itself. If the bill is drafted so that it can be paid only to one specific recipient, moreover, ruled out the possibility to pay for his order – this is a *nominative bill*. If the right to receive payment under the bill aside specified in the text of the document to the recipient, in this case it is assumed that it may be ordered to pay not to him, but to anyone – this *order bill*.

Bill's advantages, participants of accounting. Acceptance of a bill

From one person to another the nominative bill as a security transferred by way of

assignment of the claim (the Latin word – *cession*). The order bill can be passed by the commission on its reverse side transfer labels (the Italian name – *indossament*, in english – endorsement). The order bill passed by endorsement, imposes on each pass this bill is liability: 1) for the fact that a property right to receive the amount specified in it actually exists; 2) for the fact that a property right to receive the amount specified in it the recipient will be able to promptly and implement in full.

Public accuracy of the bill means that conscientious bill acquirer acquires (buys) and just exactly what is written in the text. It does not touch anything, what the text agreed over the past owners of bill to each other, as well as anything that has been associated with the preparation of the bill initially.

The *unconditionality* bill provides that the promise to pay on a ordinary bill or offer to pay for a bill of transfer no circumstances may be attached to whatever conditions. The bill does not contain any obvious conditions («I promise to pay if ...», «pay if ...»), no hidden conditions («I promise to pay within 100 days after the marriage», «pay from his current account in a Russian bank»).

The *abstractness* of the bill means that do not matter the circumstances, on the basis of which the right to demand payment of money from the person-bearer, who became the holder of the bill properly.

The *formality* of the bill involves the compulsory presence in the text of all the information, details of the above, and each of them must be properly designed, otherwise the document as a bill of exchange is not valid.

With the financial and legal terms of bill ratio is one-sided. Here every participant is either the only creditor or the debtor only, it is impossible that the same member was simultaneously both. Consider the composition of these participants.

Billholder – a person who is a holder of the bill properly, which is to be paid the bill against the oncoming presentation of their original document.

Billwriter – the person, who drafted and signed the bill. If issued a ordinary bill, the billwriter is the main debtor and obliged of committing direct cash payment. In the bill of transfer the billwriter – a recourse debtor, he is obliged to make a cash payment, the payer as a backup, if the document

will not be paid by the person who has been asked to pay a bill. The person, whom the bill is proposed to pay and to express it their written consent (acceptance) is the acceptor. This entity accepted the bill, it becomes the principal debtor under the bill, as a rule, they can only be a person who was originally assigned to the text bill payer on it.

Endorser – the billholder, who has received endorsement by the bill properly. If the bill is passed in the mortgage, there is a bill on security mortgagee endorsement. If any person is authorized to receive payment only, there is endorsement by agent.

Surety – is the guarantor for the bill obligations, he can vouch for both the primary obligation, and the debtor of recourse. This guarantor is financially liable on the same conditions and as much on what conditions and how much should be borne by whom given surety.

Acceptance function is quite simple and rational. You can not invite someone to pay a sum of money on document-bill, without the agreement of the person. While the bill of transfer is not accepted by – a document without the principal debtor, moreover addressed earlier offer to pay a bill does not have any financial and legal force, which individually certain payment obligation. Obviously, in such a ordinary bill is not required because the billwriter himself, as the payer, initially gave his consent to pay the bill. However, the question of the actual presentation of the bill for registration of acceptance is not so simple, they formed two groups of responses to it: 1) the system of compulsory submission for acceptance; 2) the system of optionality presentment for acceptance. Here again it is advisable to refer to fig. 2.

Acceptance of bill is accomplished by expression in the prescribed form by the payer's consent to pay the bill of transfer. There is a strict order of presentation of a bill for acceptance, assuming compliance with the deadline, time, place of such presentation, as well as rules on the persons entitled to acceptance, and which should present a bill for acceptance. In a standard situation, the bill is presented for acceptance in the period from the date of issue until the date of payment. In the event of force majeure, this deadline may be extended for the duration of these circumstances. If the bill acceptor is organization,

a bill is presented for acceptance into the working day during normal working hours. The bill is presented for acceptance at the location of the payer-acceptor – the legal address of the organization or at the place of residence of an individual person.

The acceptor may only person named in the text of the bill as payer. If there are multiple payers, bill must be accepted by each of them in relation to themselves. Billholder may itself present a bill for acceptance, and may pursue through a secondary. In practice acceptance is made only in written form on the letterhead of the bill (but not the additional pages and not copies). If the bill is drawn up in several copies, stamped acceptance is permitted on any of them, including at all. Acceptance in the form of a simple signature of the payer must be committed to the front side of the bill. Acceptance in the form of verbal expression, written payer is usually a word «accepted» or similar adequate expression, simple and unconditional. Otherwise, if such an inscription may be interpreted as changing the contents of the bill obligation, it is regarded as a disclaim to accept. If the bill is accepted with a term of payment «in so much time on the presentation», you must act according to the rules of dating the acceptance of such a bill. On this bill must indicate the date of acceptance, or at its absence, it is impossible to determine the date of payment. However, when not writing this date, it is virtually compensated, acceptance shall be considered committed by the last day of the period set for the submission of a bill for acceptance.

Payer, which a bill is presented for acceptance must provide your response (to accept the bill or disclaim) within one working day. At the moment billholder to receipt of the accepted bill, its acceptance is effective. Accept the bill is issued with the voluntary consent of the acceptor directly to the billholder or his authorized secondary.

Results

Intensive use of bill in the economic turnover due to the properties of its easy and multiple transferability. The basis of the possibility of transmission of bills between the participants is an endorsement. Endorsing – it's such a transfer of bill, as a result of which the person receiving

the bill, it becomes a holder properly. Indossament – this endorsement of a billholder on the back of the bill, that fixes the transfer of rights under the bill, the new billholder.

If the endorsement is committed to maturity, right on the bill are transferred to the new billholder. Nothing does not change the situation and commit endorsement after date of pay. If not indicated the date of endorsement, it is believed that the endorsement is committed to the due date of pay on the bill. The text of the bill can contain a ban on the transfer of its endorsement, and then if the endorsements are written, they will not receive any force. Possible ban on the transfer of the bill in some regular endorsement, for example, such expressions: «non-endorsement», «undertake to pay only the Bank «North».

Directly involved in the endorsement:

- endorser – the previous billholder, passing bill by endorsement;
- endor – new billholder, who takes an instrument according to the endorsement.

The endorser may only be the billholder, specified in the original text of the bill, or a person, which is itself obtained the bill by endorsement. As an endor may be any person. If the endorsement is made in favor of the payer on the bill, there will be a match of the debtor and creditor in one person, and a monetary obligation is terminated. At the same time, such a bill could be once again from it already endorsed again and continue turnover.

Three useful functions in the turnover endorsement can be identified. The transfer function allows you to transfer all the rights arising from the bill by endorsement. The legitimizing function of endorsement opens the possibility of a creditor to prove their rights to the debtor on the bill, referring to a continuous series of endorsements. Guarantee function includes endorsement endorser in terms of recourse (replacement) of debtors over the transferred bill. Recourse debtor under the bill becomes a par with the other endorsers responsible for payment of a bill. However, it is possible to partially abandon the endorser of such responsibility by writing a reservation «without recourse to me», and by writing the ban further endorsement of the bill. Endorser thus still remains recourse debtor to the person to whom he passed the bill with a prohibitive reservation.

There are two varieties of endorsement. *Regular endorsement* carries the new note billholder and the ownership of the bill itself, and all rights under the bill. This endorsement can be nominative (recorded name of the person to whom these rights are transferred), can be unnominative (name of the person in the text is not an endorsement). *Restrictive endorsement* may limit further endorsement of the bill, may be entrusting, may be mortgage endorsement. The bill, issued in several copies (included), transmitted by writing an endorsement on each copy, a copy of the bill also endorses a script.

The endorsement shall take effect from the date of issuance of the new billholder by the endorser to the holder after the endorsement. Moreover, if the endorsement unnominative – it is placed on the reverse side of the bill. If the bill is no place for a large number of endorsements, added (glued) a special sheet of paper – allonge, if the endorsement is written on it. If an endorsement is nominative, no significance is not on the front or back of the bill, it writes.

Conclusions

In the endorsement, if he unnominative, no text is not at all, only after it becomes the signature of the endorser. This signature must meet the same requirements as the signature on the bill. The nominative endorsement must contain the name of the endorser (if the organization – everything that is written on its signet, if a individual person – all that is written in his identity document, in the «name, second name, third name»), and the date it was written. At the same time a nominative endorsement to be a simple and unconditional, shall transfer the right to receive the entire amount of the bill, but not part of it. However, the endorsement may be in favor of several persons, then entitled to receive principal amount solidarity goes to those few signatories of the bill.

Terms of bill's turnover [9] does not contain specific requirements for language, which can be committed by an endorsement. Therefore, the endorsement can be formally written in a language other than the language of the bill text, and the rules are not prohibited even writing different words in different languages endorsement.

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