

CLIENT BRIEFING

BILLS OF EXCHANGE

A BRIEF INTRODUCTION TO THE TREATMENT
OF BILLS OF EXCHANGE UNDER DANISH LAW

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BILLS OF EXCHANGE - A BRIEF INTRODUCTION

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This brief introduction to the main aspects of the treatment of bills of exchange under Danish law is intended to provide a useful overview when structuring international finance transactions involving the Kingdom of Denmark.

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General

A bill of exchange is basically a written order made by one party (the drawer) to another party (the drawee) to pay a certain amount of money to a third party (the payee). As the bill of exchange may be endorsed by the payee, it can be transferred to yet another third party as the recipient of the right to be paid by the drawee, e.g. a seller of goods will require a purchaser to pay, either on demand (a sight bill) or usually at a specified time in the future (a term bill), the purchase price to a specified third party or the holder of the bill of exchange.



Before the advent of electronic money transfer, bills of exchange were for centuries widely used in international trade as means of payment between merchants. As bills of exchange do not carry interest, they basically constitute a debt instrument with a maturity in the future. They may however accrue interest after maturity. By presenting the bill of exchange to a banker, the seller could obtain immediate payment from the banker. The banker would in turn acquire the bill of exchange at a discount taking credit risk and payment delay into consideration.

The difference between a promissory note and a bill of exchange is that the bill of exchange can be transferred and can bind one party (the drawee) to pay a third party (the payee) even though the third party was not involved in the creation of the bill of exchange. The drawer is essentially a creditor with the right to transfer the debtor's future payment obligation.

Example

By way of example, company A decides to purchase goods from company B for EUR 1 million. Company B draws a bill of exchange for EUR 1 million payable in 120 calendar days, being both the drawer and payee in this example. Company A becomes the drawee and accepts the bill of exchange after which Company B then manufactures and ships the goods to company A. 120 calendar days later, Company B presents the bill of exchange to company A for payment. The bill of exchange was an acknowledgment created by company B, as seller and creditor, to show the indebtedness of company A, the purchaser and the debtor. The 120 calendar term constitutes the credit granted by company B to company A. Between the issuance and the maturity of the bill of exchange, company B may transfer the bill of exchange to a third party at a discount to the face value as a means of financing the purchase of the raw materials needed to manufacture the goods to be supplied to company A. This makes it a negotiable debt instrument. If company A defaults on the payment due, the third party may seek recourse against company B for the payment due under the bill of exchange.



Danish Law of Bills of Exchange

Danish bills of exchange are governed by the consolidation act nr. 1661 of 12 December 2018 (Bekendtgørelse af Veksellov Nr. 1661 af 12. December 2018) (the "Act"). While bills of exchange are only used to a limited extent in Danish commerce, the Act is extensive and complex. The main provisions of the Act are set out below.

Main Elements

A bill of exchange (Veksel) is a form-bound document that must fulfil certain criteria prescribed by the Act. The formal prescriptive criteria are set out in para. 1 subsections 1-8 of the Act as follows:

Title: A bill of exchange must be titled "Veksel" inserted in the text itself in the language in which the document has been drafted.

Unconditional: A bill of exchange must have an unconditional request to pay a specific amount (Vekselsummen).

Payor: It must state the name of the person who must pay the amount specified (Trassaten).

Due Date: It must state the due date for payment (Forfaldstiden).

Payment Place: It must state the place of payment.

Payee: It must state the name of the person to whom payment must be made (Vekseltager) or to whose order payment must be made (Remittent).

Issuance: It must state the day and place of issuance.

Signature: It must contain the signature of the issuer of the bill of exchange (Trassenten).

If a bill of exchange does not meet the formal criteria prescribed by the Act, it will not be recognised as a bill of exchange pursuant to the Act.



The issuer of a bill of exchange vouches for the validity. If the bill of exchange has been signed by a person without authority or capacity to do so, the subsequent obligors will never the less be held responsible. For the purposes of the Act, the bill of exchange obligors include all subsequent transferors, holders, guarantors, etc. Moreover, the signatory acting without authority will be held liable for the bill of exchange but will upon due payment acquire the ensuing rights of the issuer by subrogation.

Any bill of exchange can be transferred (Endossement) to another holder (Endossatar) unless it is expressly stated not to be transferrable. Any transfer must be unconditional, and no purported conditions will be recognised by the Act. The transfer must be in full for the full nominal amount and cannot be for a part of the nominal amount. A transfer to 'a holder' will be considered a blank transfer (Blankoendossement). A transfer will therefore be valid even if the transferee is not noted. A transfer must however be noted on the bill of exchange or attached to it (Allonge) signed by the transferor (Endossenten).

Upon a transfer, all rights to the bill of exchange will be transferred. If the transfer is a blank transfer, the holder can insert the holder's own name or the name of another. The transferor (Endossenten) remains liable for the acceptance of the bill of exchange and its payment unless certain precautions have been taken, such as a prohibition on further transfers, whereby liability to other transferees will be extinguished.

The holder of a bill of exchange will be regarded as the lawful holder if the holder can document an unbroken chain of transfers, even if the last transfer is a blank transfer.

The loss of a bill of exchange holder's rights or objections follow the usual conditions of acquisition in good faith or without gross negligence and is based on an unbroken chain of transfers. For payments pursuant to the bill of exchange, this results in the debtor's discharge to the holder legitimated by the bill of exchange.

As a bill of exchange has multiple obligors, i.e. the various transferees and transferors, each will remain vicariously liable to the ultimate holder, i.e. the holder can direct the claim for payment to any one of them at maturity. Each will then have subsequent regress through the chain of ownership.



Maturity

Upon maturity, the bill of exchange is presented for acceptance and is to be signed by the debtor (Trassaten) who needs to sign the bill of exchange for acceptance. If the bill of exchange states a maturity date, the bill of exchange must be presented for payment on that date or within two business days thereof. The presentation of the bill of exchange to a clearing house will be considered equivalent presentation for payment. The debtor will then be required to honour the bill of exchange in the stated currency (forbehold om effektiv betaling i fremmed mønt).

Upon maturity of the bill of exchange, the holder has in the event of non-payment an immediately executable claim (umiddelbart eksigibelt krav) before the Danish courts pursuant to the Administration of Justice Act (Retsplejeloven) para. 478 subsection 1 no. 7. This means that the claim will be enforced by the Danish courts without a prior trial, subject to any defences available under the Act.

A failure by the debtor to pay the holder at maturity, will entitle the holder to seek regress from the remaining obligors. This right may become enforceable before maturity if the debtor has refused acceptance prior to maturity, if the debtor is under insolvency administration or equivalent.

If the debtor files a protest against the bill of exchange, a procedure with short notice periods is initiated whereby the various obligors issue notices pursuant the chain of ownership as they are jointly and severally liable to the holder. The holder can claim against the obligors for payment and default interest of six per cent, costs and 1/3 per cent of the bill of exchange in fees. The next claimant can claim further down the chain with the proviso that the right to claim 1/3 per cent in fees extinguishes when the fees have reached two per cent of the nominal amount of the bill of exchange. This can also be effectuated by issuing so-called counter bills (Modveksler).

A failure to present the bill of exchange on the due date for maturity will lead of a loss of the right to seek redress from other obligors but the debtor.

All claims are subject to a three-year limit from the maturity date. The holders claim against the transferors are extinguished after one year from the maturity date and regress claims between the transferors are extinguished after six months. The statutory limitations will be stopped in the event of legal action before the courts.



Jurisdiction

A foreigner's ability to enter into a bill of exchange will be assessed in accordance with the foreigner's jurisdiction. If this legislation declares the law of another country to govern, the latter law shall apply. The form of the bill of exchange will be assessed pursuant to the law of the jurisdiction in which it has been signed. If a bill of exchange is invalid under the provision of the initial jurisdiction but is valid under the law of a country where a later obligation is signed, the nullity of the first obligation shall not cause the later obligation to be considered invalid under the Act.

A bill of exchange entered into by Danish citizen outside the Kingdom of Denmark and who, in respect of the form, meets the requirements of Danish law, must be regarded as valid in relation to another Danish citizen, even if the obligation arising from the original jurisdiction has to be considered invalid.

The deadlines for exercising the right of recourse shall be assessed for all obligors under the law of the country in which the bill of exchange has been issued. Generally, the law of the jurisdiction in which a bill of exchange is payable determines how a payment obligation is to be treated. If foreign law is to be applied in the course of a trial under the prescribed regulations, the court may, in so far as the foreign law in question is not known to the court, order the party concerned to provide the information required in this regard.

Modern Usage

While the bill of exchange framework is an arcane and historical trade finance instrument that predates the advent of modern banking, it constitutes a legally mature and well-developed debt instrument which is still used in modern international trade as a means of both credit and payment at a discount before maturity. It has the ability to serve as a means of providing credit by the seller to the purchaser while simultaneously being used as payment and security at a fairly low-intensity in terms of legal documentation and administration.



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