

*Dirassat & Abhath*  
The Arabic Journal of Human  
and Social Sciences



مجلة دراسات وأبحاث  
المجلة العربية في العلوم الإنسانية  
والاجتماعية

EISSN: 2253-0363  
ISSN : 1112-9751

## The Exclusive Role of the Bill of Exchange in the Guarantee of Acceptance

### استثناء السفتجة بضمانة القَبُول

---

**BENAMMOUR Aicha**

MCA, University of Ahmad ibn Yahya al-Wansharisi, Tissemsilt, Faculty of Law and Political Science, Department of Law

benammour.aicha@univ-tissemsilt.dz

بن عمور عائشة

أستاذة محاضرة أ، جامعة أحمد بن يحيى الونشريسي، كلية الحقوق والعلوم السياسية، قسم الحقوق، المخبر: البحث في

تطوير التشريعات الاقتصادية

benammour.aicha@univ-tissemsilt.dz

---

تاريخ القبول : 2025/09/20

تاريخ الاستلام: 2025 /07/07

## Abstract:

The Algerian legislator, in the Commercial Law of Algeria, has enacted a set of legal and contractual guarantees for the negotiation and fulfillment of commercial instruments. Among the guarantees exclusively attributed to the bill of exchange, as opposed to other commercial documents, is the guarantee of acceptance.

From this standpoint, this research paper examines the legal provisions governing this guarantee and the rationale behind equipping the bill of exchange with it. The study concludes that establishing acceptance as an exceptional legal guarantee for the bill of exchange is due to the very nature of the document as an important commercial instrument possessing a unique legal character. This uniqueness lies in its involving three parties and in the fact that the legal status of the drawee is initially transformed from that of a foreign party in relation to the bill to that of an original debtor concerning its value on the maturity date aside from the role acceptance plays in the life of the bill as more than just a legal guarantee for a monetary obligation incumbent on both the holder and the drawee, as well as on the bill itself as a commercial instrument.

**Keywords:** Acceptance, Bill of Exchange, Monetary Obligation, Guarantee.

## المخلص:

لقد أقر المشرع في القانون التجاري الجزائري مجموعة من الضمانات القانونية والإنفاقية للتعامل والوفاء بالأوراق التجارية، ومن بين الضمانات التي خص بها السفتجة دون غيرها من الأوراق التجارية ضمانة القَبُول. من هذا المنطلق تدرس هذه الورقة البحثية الأحكام القانونية لهذه الضمانة، والحكمة من تمكين السفتجة بها، وما تم استخلاصه من هذه الدراسة أن إقرار القَبُول كضمانة قانونية استثنائية للسفتجة مرده خصوصية هذه الورقة في حد ذاتها كورقة تجارية هامة وذات طبيعة قانونية خاصة؛ لأنها تكون بين ثلاث أطراف، كما أن المركز القانوني للمسحوب عليه يتغير مبدئياً من شخص أجنبي عن السفتجة لمدين أصلي بقيمتها في تاريخ الإستحقاق، علاوة على الدور الذي يلعبه القَبُول في حياة السفتجة من مجرد ضمان قانوني لإلزام صر في يقع على الحامل والمسحوب عليه وعلى السفتجة كورقة تجارية. الكلمات المفتاحية: القبول، السفتجة، الإلتزام الصرفي، الضمانة.

## 1. INTRODUCTION

The Commercial Law contains the bill of exchange by the Algerian legislator and treated it with a more detailed regulatory framework compared to other commercial instruments, such as the cheque, thereby limiting its practice and usage in Algerian society .

However, given its importance and the role it plays in commercial life especially regarding credit and performance the legislator has surrounded it with both

legal and contractual guarantees that preserve its status and encourage its circulation in commercial transactions. In contrast, the legislator has been strict and rigorous by adopting numerous systems, such as the security of obligations governed by Monetary Law .

Consequently, the drawee's acceptance guarantee was established whenever there was a need to introduce strong guarantees for the bill of exchange in addition to the principle of monetary

solidarity and in exchange for performance. Unlike guarantees of intervention acceptance and of reserve, the present study focuses on the guarantee in question .

For the record, the provisions regarding the acceptance guarantee are organized in Section Four of Chapter One of Part One of Book Four under the title “On Acceptance,” in Articles 403 to 408 of the Commercial Law .

It is clear from this that the legislator has given the bill of exchange a guarantee. This fact raises the question: Why did the legislator when regulating the provisions of the bill of exchange in the Commercial Law, exclusive assign the acceptance guarantee and organize its provisions otherwise, the guarantee to other commercial instruments ?

In order to answer this issue, we have followed an analytical method with respect to the various legal texts that regulate its provisions and employed a descriptive approach to study acceptance as an exclusive legal guarantee .

Consequently, this research will be divided into two sections. First, it will examine acceptance as one of the legal guarantees of the bill of exchange. Then, it will deal with the rationale for equipping the bill of exchange with the guarantee of acceptance.

### **Section One: Acceptance as One of the Legal Guarantees of the bill of exchange**

A bill of exchange has an inherent order to the drawee by the drawer to pay a certain amount of a specified person on the maturity date. However, this order does not impose an obligation on the drawee to make payment, for an individual is bound only by his own will and not by another’s desire to settle a debt. Thus, if the drawee does not accept the bill, the holder may claim only

the performance counterpart that has accrued to him by operation of law. Conversely, if the drawee signs the bill of exchange by accepting it, a direct monetary obligation arises in his liability toward the holder an obligation that is independent and detached from his previous commitment in relation to the drawer. Consequently, the drawee cannot discharge the holder’s claim on the grounds which he might have opposed in relation to the drawer, ensuring that the holder is secured against the performance obligation on the maturity date<sup>1</sup>.

Typically, at its creation, the bill of exchange does not include a single signature of the drawer; however, throughout its lifetime, it may acquire several signatures either on its face or on its reverse which greatly increases the possibility of confusing these signatures, and similarly, confusion may arise as to the separate monetary obligations pertaining to each signature.

Thus, it is first necessary to define the concept of the acceptance guarantee in a first subsection, followed by a study of the legal provisions regarding the presentation of the bill for acceptance in a second subsection.

#### **Subsection One: The Concept of the Acceptance Guarantee**

Acceptance is nothing other than one of the monetary obligations that arise upon signing, similar to many other actions that may be attached to the bill of exchange such as endorsement or the reserve guarantee, among others. It constitutes the drawee’s undertaking to pay the value of the bill on its maturity date. Thus, it does not merely represent an acknowledgment of debt towards the drawer, but it also imparts upon the drawee a monetary undertaking.

This discussion will first address the definition of acceptance (Branch One), then the conditions for its validity (Branch Two), and finally the cases in which its presentation by the drawee is or is not required (Branch Three).

### **Branch One: Definition of Acceptance**

Acceptance is a promise, which is in essence the written undertaking by the drawee to pay the value of the bill of exchange<sup>2</sup>. According to article 407, paras. 1 of the Commercial Law, “acceptance obliges the drawee to pay the amount of the bill of exchange at maturity”, acceptance is regarded as a fundamental guarantee for the fulfillment of the bill’s value”.

Current laws allow the drawee to either accept or reject the bill presented to him<sup>3</sup>; nevertheless, the underlying principle remains that the holder is free either to present the bill for acceptance or to wait until its maturity although this principle is subject to certain exceptions:

- **On one hand**, presentation for acceptance may be imposed on the holder pursuant to a clause that conditions the obligation to present for acceptance, which is inserted at the drawer’s discretion, either with a specified time limit or without one. This clause can also be inserted by any endorser, as confirmed by the fifth paragraph of Article 403 of the Commercial Law.

- **On the other hand**, the drawer may insert a clause that exempts him from acceptance. Such a clause is typically provided when the drawer has not secured the performance counterpart or when he doubts the good faith of the drawee and does not wish to be troubled by entering the field of negotiable instruments that the drawee might refuse to accept<sup>4</sup>.

### **Branch Two: Conditions for Acceptance**

For any legal act to be valid, both substantive and formal conditions must be met. Since acceptance is a monetary undertaking that commits<sup>5</sup> the drawee by his signature, its validity depends on the fulfillment of certain conditions, which we now detail:

#### **First: Substantive Conditions**

The drawee must be competent to assume a monetary obligation, which requires the capacity to bear such an obligation. In this respect, his capacity is no different from that of the drawer or any endorser—provided he has attained the legal age of maturity or possesses the legal capacity for commercial transactions with his consent unblemished by defects<sup>6</sup>. If his capacity is impaired by a defect, he may not invoke it against any holder other than the one who specifically requested acceptance and obtained it, in accordance with the principle of purging the instrument from defenses<sup>7</sup>.

Moreover, the fourth paragraph of Article 405 prohibits any modification by acceptance of the details contained in the text of the bill, considering such modification tantamount to a refusal of acceptance. In addition, the legitimacy of both the subject matter and the cause is imperative, and neither may contravene public order, public morals, or the provisions of Monetary Law.

Furthermore, acceptance must be an unequivocal act, not subject to any condition or limitation; Otherwise, it will be considered a denial. For example, when acceptance is given in condition of receiving the performance counterpart, completing the transaction, or selling merchandise not yet transferred<sup>8</sup>—as occurs in the third paragraph of Article 405 of the Commercial Law- would affect the negotiability of the

bill. In addition to prohibiting acceptance coupled with any restriction or condition that allows for partial acceptance—in which case the drawee must specify the amount accepted—the holder cannot refuse partial acceptance, although he may rely on the consequences arising from the refusal of the remaining portion of the bill's value, such as by drafting a protest against non-acceptance for the unpaid part<sup>9</sup>.

Conversely, while traditional bill acceptance is permitted under the Commercial Law pursuant to Article 407, the matter of acceptance presents problems for both forms of electronic bills of exchange<sup>10</sup>. Although certain indicators suggesting the act of acceptance may be adopted to resolve the issue of signing for acceptance on paper-based electronic bills forms that include an acceptance field functioning as an informational code confirming the drawee's consent or refusal to discharge the electronic amount any failure to present the paper-based electronic bill for acceptance results in the loss of the right to pursue the monetary claim upon the drawee's refusal to perform. In contrast to paper-based electronic bills, magnetized electronic bills require adherence to a system that aligns with the acceptance procedure, such that they are regarded merely as an agency or a bank transfer. As a result, acceptance does not extend to electronic bills with a magnetic signature, as they do not gain the status of a bona fide instrument in the nature of a bill of exchange nor do they fall under the provisions of Monetary Law. However, as a member of the parties to a magnetized electronic bill, The bank may intervene through a required technology — a link for the bill or an indicator for acceptance<sup>11</sup>.

## **Second: Formal Conditions**

Acceptance is not inscribed on the instrument itself; rather, it must be expressed through wording that conveys its meaning, such as "Accepted" or "I Will Pay," and it must be accompanied by the drawee's signature. A signature<sup>12</sup> on the face of the instrument is sufficient<sup>13</sup>; however, if the drawee signs on the back of the instrument without any such wording, it is regarded as an endorsement rather than an acceptance<sup>14</sup>. If he signs on the back along with the phrase "Accepted Here," it is considered an acceptance but such acceptance cannot be oral.

In addition, it is acceptable to add optional information such as the date when the bill was presented for acceptance and the place of acceptance. Nonetheless, the date of acceptance may be made obligatory for a bill which is payable after the expiry of a certain period after its presentation or if it is provided to be presented for acceptance on a certain day. If no date is mentioned on the acceptance, the holder should prove the absence of date in a protest within the period prescribed by law, so as to preserve rights against the endorsers and drawer<sup>15</sup>.

An acceptance executed on a document other than a bill of exchange does not produce the effects of the monetary obligation. Rather, the obligation is regarded as independent and governed by the general principles of civil law, and only the holder who requested and endorsed it for his benefit may avail himself of it. Furthermore, if that holder subsequently endorses the accepted bill in this manner, the bill is thereby endorsed in a way that necessitates acceptance governed by Monetary Law<sup>16</sup>.

## **Branch Three: Cases Requiring or Prohibiting the Presentation of the Bill for Acceptance**

The drawer of the bill of exchange has the option to exercise his acceptance guarantee at his leisure unless the drawer performance bundle positions acceptance as obligatory in the circumstances. Consequently, his failure to exercise this right does not amount to negligence; however, certain circumstances do require that the bill be presented for acceptance, while others mandate that it must not be presented. These situations are detailed as follows:

### **First: Cases Requiring Presentation of Acceptance**

Either there is an elective clause which provides for the presentation of the bill for acceptance by the drawer or endorser, or a prevailing trade custom applies here, or a period has elapsed after the presentation of the bill<sup>17</sup>.

### **Second: Cases Prohibiting the Presentation of Acceptance**

When there is an elective clause by the drawer or an endorser prohibiting the presentation of the bill for acceptance, this kind of case arises, when an extant commercial custom applies, or when the bill is drawn immediately upon presentation since under these circumstances the holder will approach the drawee solely to demand payment, not to obtain acceptance.

### **Subsection Two: Provisions Governing the Presentation of the Bill for Acceptance**

It is upon the holder to either ask for acceptance or to remain silent during the life of the bill except in the case where the request for acceptance is compulsory. In such cases, the legislator intervenes to regulate both the procedures for activating acceptance (Branch One) and the

consequences resulting from such presentation (Branch Two).

### **Branch One: Procedures for Presenting the Bill for Acceptance**

To see if the drawee is willing to accept the bill, the holder must present it to the drawee. Presentation for acceptance must be made by the holder or any possessor of the instrument at the domicile of the drawee at any time after the creation of the bill until its maturity. The first sentence of the second paragraph of Article 404 of the Commercial Law holds that the holder does not have to present the bill for acceptance by the drawee. Since the drawee is not always able to quickly verify the existence of a debt equivalent to the value of the bill owed by the drawer, the legislator allows him to request a second presentation for acceptance on the day after the first<sup>18</sup>; however, he cannot require the presenter to leave the bill in his possession<sup>19</sup>.

Conversely, the legislator has authorized the cancellation or revocation of acceptance pursuant to the first paragraph of Article 408 of the Commercial Law. It provides that if the drawee inscribes an acceptance clause on the bill and subsequently crosses it out before returning the bill, the acceptance shall be deemed rejected. The provision further favors the debtor by presuming the cancellation to be effective prior to the return of the instrument unless proven otherwise<sup>20</sup>.

Based on the foregoing, acceptance is a legal act that, alongside the fulfillment of the requisite substantive and formal conditions, must be presented to the drawee at a specified time and place. Such presentation must be made by the holder, his agent acting on the drawee's behalf, or his authorized representative in order to produce all of its legal effects.

### **Firstly: The Time and Place for Presenting the Bill for Acceptance**

Commercial Law Article 406 provides the rules relating to the place for presenting the bill for acceptance. This may be either the domicile of the drawee, a place chosen as an elective declaration, or the domicile of the bill itself. Moreover, the place designated for acceptance may differ from that of payment, according to the drawee's preference regarding performance.

By "time of presentation" is meant the period during which acceptance may be requested that is, any moment from the creation of the bill until its maturity. However, there are two exceptions to this rule, one legal and the other contractual. The legal exception relates to a bill that becomes due upon mere presentation; in such a case, the maturity date can only be derived from the date of presentation, which shall not exceed one year from the date of its creation. The drawer may shorten or extend this period, whereas endorsers are required to limit it and are prohibited from extending it<sup>21</sup>, in conformity with paragraphs 6, 7, and 8 of Article 403 of the Commercial Law. The contractual exception arises when the drawer expressly stipulates that the bill shall not be presented for acceptance before a specified term, pursuant to paragraph 4 of Article 403 of the Commercial Law. Such a clause is typically inserted by the drawer to secure the performance counterpart, and on certain occasions the drawee's acceptance is requested by the drawer even before the bill is delivered to the beneficiary thus permitting its discounting at any moment chosen by the holder<sup>22</sup>.

### **Secondly: The Nature of Acceptance**

Acceptance is issued by the drawee designated on the bill, either initially or through his duly authorized agent. It is

proper for the holder or his agent to request acceptance, and even the physical holder of the bill may do so without the necessity of verifying an unbroken chain of endorsements. This is because the matter concerns not the actual payment but the acknowledgment of the existence of the performance counterpart on the maturity date a function often performed by banks on behalf of their clients. The legislator grants the drawee a period of 24 hours from the time the bill is presented for acceptance in order to deliberate, during which he may either accept or reject<sup>23</sup> the bill, while the bill remains in the holder's possession.

### **Branch Two: Consequences of Presenting the Bill for Acceptance**

When the bill is presented for acceptance, several outcomes are possible:

#### **Firstly: Acceptance of the Bill by the Drawee**

As a general rule, the drawee must not accept the bill when it is presented to him, even if he has received from the drawer the performance counterpart. This is because, upon acceptance, he becomes a debtor under a monetary obligation, whereas prior to the signing for acceptance he was merely an ordinary debtor. Consequently, he then assumes onerous obligations and is deprived of the benefits associated with being an ordinary debtor. Nonetheless, there are three cases in which the drawee is obliged to accept the bill: a legal case, a customary case, and a contractual case<sup>24</sup>.

1. **The Legal Case:** As provided in Article 403/8 of the Commercial Law, the drawee is obliged to accept the bill if it is drawn upon the presentation of goods from one trader to another. In this case, the instrument in the bill must be implementing the commercial contract whose object is the delivery of goods,

that is to say, a contract has already been concluded between the traders, and the drawer has properly performed his obligations under the contract by delivering the said goods to the drawee. The drawee is to be given a fair time to check the receipt of goods and the compliance of the drawer with his obligations. If all four of these conditions are satisfied, the drawee must accept the bill.

**2. The Customary Case:** This arises when commercial custom mandates the presentation of the bill for acceptance typically when a bill is drawn by one trader to another in respect of a commercial debt. Under such circumstances, commercial custom may render the drawee liable for damages if his rejection of acceptance necessitates compensation.

**3. The Contractual Case:** This occurs due to the contract between the drawer and drawee, which makes the latter agree to accept the bill. An agreement can be either expressly made or implicitly understood.

## **Secondly: Rejection or Refusal of Acceptance**

Rejection may be complete, expressed either explicitly or implicitly as in cases of conditional or limited acceptance based on a particular condition or consideration and may also take the form of an amendment to the details of the bill<sup>25</sup>. Notwithstanding, the party who manifests acceptance remains bound by the terms contained in the expression by which he signified his acceptance<sup>26</sup>; for instance, in the case of partial acceptance defined by acceptance limited to a specified amount, the portion not accepted is deemed to have been rejected.

Notwithstanding the reason behind the drawee's refusal to accept whether because he is not indebted or because he is indebted but the time for payment has not yet arrived—the drawee bears no liability. He is under no obligation because he has not undertaken to accept the bill, or he may rightly decline for reasonable causes that justify rejecting the bill.<sup>27</sup>

Accordingly, if the drawee rejects the bill, the holder is left with several options: he may either wait until the maturity date and then return to demand payment; or draft a protest, await the maturity date, and then claim the performance counterpart<sup>28</sup>. In some instances, if payment is rendered or declined, the holder may initiate an action for monetary recourse without the necessity of drafting a protest for non-payment unless the bill provides for recourse without protest. Finally, he may opt to issue a protest for non-acceptance, then recourse against the endorsers by demanding that they furnish a surety to substitute for the guarantee of acceptance<sup>29</sup>, in the event they do not promptly satisfy the instrument's value<sup>30</sup>.

But if the debt is immediate or becomes due before the stated maturity, does the drawee's refusal to accept render him liable vis-à-vis the drawer? To answer this, it is essential to distinguish between two cases: the non-trader drawee and the trader drawee<sup>31</sup>.

**1- The Non-Trader Drawee:** If the drawee is not a trader and is not bound by a commercial debt, he may rightly refuse to accept the bill so as to avoid adversely affecting his position. This is because his acceptance would convert his obligation into one of a commercial nature, rendering him jointly liable. In such circumstances, the holder may sue him in commercial courts

together with any of the other joint debtors or endorsers of the bill. In addition, he would forfeit the right to request a deferment in paying its value and would be precluded from asserting the defenses he might have otherwise raised against his own creditor if the bill had not been drawn upon him<sup>32</sup>.

**2- The Trader Drawee:** If the drawee is a trader or if the debt is of a commercial character, prevailing custom among traders must be taken into account. When such custom provides that traders collect their debts via bills, then the drawee is held jointly liable if he refuses to accept the bill<sup>33</sup>.

## **Section Two: The Rationale Behind Affording the Bill of Exchange the Guarantee of Acceptance**

As noted earlier, by signing for acceptance the drawee becomes subject to monetary obligations and falls under the provisions of Monetary Law mirroring his joint liability with the endorsers and his transformed legal status as the principal debtor. This section elaborates on that principle by examining (Subsection One) the role played by the guarantee of acceptance in establishing new legal positions and statuses arising from the drawee's undertaking to accept the bill, and (Subsection Two) the distinctiveness of the bill as a commercial instrument compared to other instruments.

### **Subsection One: The Role of the Guarantee of Acceptance in Establishing New Legal Positions and Statuses**

When the drawee signs for acceptance on the bill, he assumes a new legal position as the principal debtor, thereby shifting the drawer into more of a guarantor's role.

In cases where the drawee does not accept the bill, the holder is compelled to take further measures such as drafting a protest or initiating an action for monetary recourse. In so doing, the role of acceptance is emphasized as evidence of the existence and entitlement to a performance counterpart on the maturity date. Acceptance plays a significant part in resolving various practical issues, including the multiplicity or loss of copies and counterparts, as well as instances of competing claims on a single performance counterpart.

### **Branch One: The Emergence of the Monetary Obligation on the Drawee**

Before the drawee endorses the bill by acceptance, the drawer is the principal debtor for its value, even though the drawee intended to pay the value at maturity.<sup>34</sup> However, once the drawee signs for acceptance, he becomes the principal debtor who must be held liable for payment, relegating the drawer to a secondary role who is liable only in the event of the drawee's failure to pay. Conversely, if the drawee does not accept the bill, he remains unbound by the monetary obligation. Should the drawer wish to substantiate his indebtedness, he is required to present evidence according to general principles. Acceptance, once given, is an absolute and binding obligation on the drawee, who may not withhold payment when the maturity date arrives as stipulated by Article 407/2 of the Commercial Law<sup>35</sup>.

According to the ninth paragraph of article 403, in executing a contract for the delivery of goods between traders, the drawee will not be perceived as a stranger. The drawer had fulfilled his part of the contract and the drawee was given time in accordance with normal business practices to check the goods. If the drawee refuses to

accept the bill, then he forfeits the time given to pay the price as per the provisions of Paragraph 10 of Article 403 of the Commercial Law<sup>36</sup>.

It is not only in the interest of the holder but also in the interest of the drawee to prevent the bill from being protested after the maturity date. In case the bill is accepted by the drawee before the maturity date, the right of the holder to the performance counterpart is secured at that moment itself. Settlement of the value of the bill has to take place on maturity date. A failure of the drawee which culminates in a protest for non-payment or non-performance gives rise to monetary recourse proceedings. Thus, it is in the drawee's interest to keep the performance counterpart until maturity, so that the drawer cannot recover or claim the performance counterpart, nor can his creditors or the drawee's creditors seize any claim against it. As per Article 407/1 Commercial Law, the drawee is obliged to make payment upon acceptance.<sup>37</sup>

Thus, acceptance introduces a new guarantee in addition to the other guarantees inherent in the bill. It imposes a fresh obligation whereby the drawee commits to paying along with the drawer and the other endorsers. This new borrower has become the main debtor to the holder. There is a greater chance of circulation and debt-settling use of the bill, if the counter performance was not delivered by the drawee<sup>38</sup>.

### **Branch Two: The Role of Acceptance as a Legal Indicator of the Existence of a Performance Counterpart**

Acceptance serves as a presumption that the performance counterpart is, or has been, received by the drawee. It functions as a simple evidentiary presumption between the drawer and the drawee, which may,

however, be rebutted by any means<sup>39</sup>, and as a conclusive presumption between the drawee and the holder.

Despite the importance of acceptance for the bill, it is not of critical significance to the holder since it serves merely as a guarantee rather than constituting actual payment. Accordingly, if the holder does not present the bill for acceptance, he is not deemed negligent except in cases where the legislator mandates that the bill be presented for acceptance. In such instances, presentation is not a condition for the validity or enforceability of the bill but rather a safeguard to ensure payment at maturity<sup>40</sup>.

### **Branch Three: Drafting a Protest for Non-Acceptance and the Rules Governing the Exercise of a Monetary Recourse Action**

Drafting a protest serves as evidence that the acceptance has been refused and marks the commencement of a series of procedural steps which the holder will undertake to avoid being regarded as negligent, thereby preserving his right to collect the performance counterpart in accordance with Monetary Law.

This protest is analogous, in terms of formal requirements, to a protest for non-payment, with the important distinction that a protest for non-acceptance specifically cites the refusal of acceptance rather than non-payment. Should the holder receive partial acceptance, he may, if he wishes to recourse against the endorsers, draft a protest covering the portion of the bill's value that was not accepted<sup>41</sup>. There is no fixed deadline for drafting a protest for non-acceptance; it may be submitted at any time between the creation of the bill and its maturity. Moreover, the holder may be relieved from the obligation to draft such a

protest if the bill itself contains an elective clause stipulating recourse without protest<sup>42</sup> in which case the bona fide holder may proceed directly with an action for monetary recourse.

#### **Branch Four: The Role of Acceptance in Issues Concerning Bill Counterparts and Competing Claims on the Performance Counterpart**

When one of the copies of the bill is presented for acceptance, the person to whom this copy is presented must indicate on the other copies the name of the person who possesses the instrument which is to be accepted and must deliver another copy to the bona fide holder. This procedure enables the holder to claim payment upon maturity based on the counterpart delivered to him. Any person in possession of the bill or a counterpart thereof shall be deemed a bona fide holder once he establishes an unbroken chain of endorsements, even if the final endorsement is left blank. This is provided by Article 457 of the Commercial Law, which states: "When one of the counterparts is directed for acceptance, it is incumbent upon that recipient to mention in the other counterparts the name of the person holding that counterpart, and that person must then deliver another counterpart to the bona fide holder. If he fails to do so, the holder may not exercise his right of recourse except after establishing by protest that:

. It is considered one of the legal guarantees stipulated by the legislator in Commercial Law, a guarantee that is exclusive to the bill of exchange as opposed to other traditional commercial instruments such as the promissory note or the cheque, or even more modern instruments like the bill of lading,

The counterpart directed for acceptance was not delivered to him at his request

– Neither acceptance nor payment was effected pursuant to another counterpart."

In addition, if several bills are drawn on a single performance counterpart and the amount is insufficient with identical maturity dates the accepted bills determine the order of payment<sup>43</sup>. If all bills remain unaccepted, then payment is allocated to the bill expressly assigned a performance counterpart; if no such allocation exists, preference is given to the bill with the earliest creation date. Should all conditions be equal, the bill containing a clause prohibiting presentation for acceptance will prevail over any that do not include that clause<sup>44</sup>.

#### **Subsection Two: The Distinctiveness of the bill of exchange as a Commercial Instrument Compared to Other Commercial Documents**

We examine the distinctiveness of the bill by considering its unique character which sets it apart from other commercial instruments as well as its special legal nature, being recognized as a commercial act in and of itself.

#### **Branch One: In Terms of the Special Nature of the Bill of Exchange Distinct from Other Commercial Instruments**

Acceptance cannot occur neither by the drawee nor otherwise except in connection with the bill of exchange

transfer instrument, or invoice assignment contract.

The bill of exchange varies from the cheque because of the difference in the function each performs as an instrument of commerce. While a bill of exchange is a credit as well as a means of payment, on the other hand, cheque is an instrument for

payment on presentment only. When someone who has a cheque gives or presents it to the drawee (a bank that is responsible for paying the holder's cheque) it is always to secure payment and never to obtain acceptance. The reasoning for this, just like a bill of exchange, a cheque does not require acceptance. If the drawee signs the cheque for acceptance, it is considered to be void. Furthermore, the bill of exchange differs from the promissory note in that the latter involves only two parties a debtor and a beneficiary whereas the bill of exchange involves three parties. Consequently, in the case of a promissory note the obligor does not need to accept it, as he is the principal debtor and guarantor of payment, unlike the bill of exchange which does not require prior notice to the drawee before its issuance<sup>45</sup>.

### **Branch Two: In Terms of the Special Legal Nature of the Bill of Exchange as a Commercial Act by Form**

Since the legal nature of the bill of exchange is that of a commercial instrument a commercial act by form in accordance with Article 4, paragraph one of the Commercial Law it is therefore subject to commercial law, its provisions, and its dispute resolution mechanisms.

Given that Commercial Law is lenient in many respects, favoring the swift nature of commercial transactions and the trust established among traders (as evidenced by the inherent self-sufficiency of the commercial instrument, the principle of purging defenses, and the short time frames for transactions), it has concurrently been surrounded by both legal and contractual guarantees to encourage its use. The guarantee of acceptance exemplifies this approach. Nevertheless, as a form of protection for these interests, stringent

penalties are applied to those who are negligent in fulfilling their monetary obligations such penalties may include excluding them from the regime of monetary obligations governed by general civil law and denying them the protection provided by Monetary Law.

### **3. CONCLUSION**

In conclusion, this research paper has demonstrated the significant importance that has been accorded to the bill of exchange as a commercial instrument governed by Monetary Law and its exclusive endowment with the guarantee of acceptance. The legislator has, within Commercial Law, enveloped this guarantee in a series of provisions designed overall to reinforce the credit function and secure the commercial instrument in a manner that serves the fundamental purpose of its inception.

The rationale for furnishing the bill of exchange with this exclusive legal monetary guarantee is directly related to its role throughout the life of the instrument and its connection to enhancing payment and settlement on the maturity date. The distinctive character of the bill of exchange as a commercial instrument being multi-party in nature and involving varied methods of payment necessitates that this guarantee be found only in the bill of exchange and not in other traditional or modern commercial instruments.

Finally, we propose a series of recommendations:

- The drawee of the bill of exchange must appreciate its significance and should try to lengthen its life by acceptance so that it could be moved quickly. He should also be aware of what the bill of exchange is basically created for.

- The lawmaker is urged to allow the merchant drawee more time to accept than the 24 hours granted by law.
- The holder should present the bill of exchange for acceptance in every instance especially in cases where there is an elective clause precluding the presentation for acceptance since acceptance serves as a guarantee rather than equivalent to payment, ultimately extending the instrument's negotiability.

#### 4. Bibliography List :

##### ■ Books :

- Rashid Rashid,(2008) *Commercial Instruments, Bankruptcy, and Judicial Settlement*, Diwan Al-Matbu'at Al-Jam'iyya.
- Zainab Salama,( no publication year) *Commercial Instruments in the Saudi System* (Collection of Regulatory Principles on Commercial Instruments).
- Saad bin Turki bin Mohammed Al-Khathlan,(2004), *Provisions of Commercial Instruments in Islamic Jurisprudence*, Vol. 1, Dar Ibn Al-Jawzi.
- Al-Tayyib Al-Loumi, (1993). *The Intermediary in Commercial Instruments in Tunisian Legislation*, Center for Studies, Research, and Publishing, Tunisia.
- Ali Jamal Al-Din Awad, (1995). *Commercial Instruments (The Promissory Note, Bill of Exchange,*

*Cheque): A Judicial Study*, Cairo University Press and Al-Kitab Al-Jami'i.

- Mohamed Ahmed Siraj and Hussein Hamid Hassan, (1977). *Commercial Instruments in Islamic Law*, Dar Al-Thaqafa for Publishing and Distribution, Cairo.
- Mohamed Saleh, (no publication year). *Commercial Instruments, Banking Operations, and Bankruptcy*, Al-I'timad Press.

##### ■ Theses :

- Othmani Karima, (2013). *Acceptance in the Bill of Exchange*, Master's Thesis, Contract and Liability Law, University of Algiers<sup>1</sup>.

##### ■ Articles :

- Boumalah Nassira, (2019). *Legal Guarantees for the Bill of Exchange*, Algerian Journal of Law and Justice, Vol. 5, No. 1.
- Bourtal Amina,(2023). *Provisions of Electronic Bills of Exchange in Algerian Law*, Journal of Law, Society, and Authority, Vol. 12, No.2.
- Maleh Zahra, (2018-2019). *The Bill of Exchange in Commercial Law: A Practical Guide, Sixth Edition*, University of Algiers 1.

##### ■ Laws :

- Order No. 75/59, issued on 26 September 1975, concerning Commercial Law, No. 78 for the year 1975, as amended and supplemented.

#### 5. Citations:

<sup>2</sup> Nadia Fawdil, *Commercial Instruments*, Diwan Al-Matbu'at Al-Jam'iyya, 2006, p. 67.

<sup>3</sup> Mohamed Ahmed Siraj and Hussein Hamid Hassan, *Commercial Instruments in Islamic Law*, Dar Al-

<sup>1</sup> Maleh Zahra, *The Bill of Exchange in Commercial Law: A Practical Guide, Sixth Edition*, University of Algiers 1, 2018–2019, p. 20.

<sup>35</sup> Nadia Fawdil, *ibid.*, p. 67.

<sup>36</sup> Rashid Rashid, *ibid.*, p. 64.

<sup>37</sup> Boumalah Nassira, "Legal Guarantees in the Bill of Exchange," *Algerian Journal of Law and Justice*, Vol. 5, No. 1, 2019, p. 85.

<sup>38</sup> Saad bin Turki bin Mohammed Al-Khathlan, *ibid.*, p. 349.

<sup>39</sup> Rashid Rashid, *ibid.*, p. 67.

<sup>40</sup> Saad bin Turki bin Mohammed Al-Khathlan, *ibid.*, p. 349.

<sup>41</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 155.

<sup>42</sup> *Ibid.*

<sup>43</sup> Nadia Fawdil, *ibid.*, p. 66.

<sup>44</sup> *Ibid.*, p. 67.

<sup>45</sup> Saad bin Turki bin Mohammed Al-Khathlan, *ibid.*, p. 346.

Thaqafa for Publishing and Distribution, Cairo, 1977, p. 112.

<sup>4</sup> Rashid Rashid, *Commercial Instruments, Bankruptcy, and Judicial Settlement*, Diwan Al-Matbu'at Al-Jam'iyya, 2008, p. 62.

<sup>5</sup> Saad bin Turki bin Mohammed Al-Khathlan, *Provisions of Commercial Instruments in Islamic Jurisprudence*, Dar Ibn Al-Jawzi, Vol. 1, 2004, p. 350.

<sup>6</sup> Ali Jamal Al-Din Awad, *Commercial Instruments: The Promissory Note, Bill of Exchange, and Cheque – A Judicial Study*, Cairo University Press and Al-Kitab Al-Jami'i, 1995, p. 152.

<sup>7</sup> Rashid Rashid, *ibid.*, p. 64.

<sup>8</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 152.

<sup>9</sup> Rashid Rashid, *ibid.*, p. 65.

<sup>10</sup> There exist paper-based electronic bills of exchange—which resemble their traditional counterparts as provided for by Article 414 of the Commercial Law—and magnetized electronic bills of exchange, which presently raise issues since they do not fall under Monetary Law.

<sup>11</sup> Bourtal Amina, "Provisions of Electronic Bills of Exchange in Algerian Law," *Journal of Law, Society, and Authority*, Vol. 12, No. 2, 2023, pp. 168–169.

<sup>12</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 153.

<sup>13</sup> Article 405/1 of the Commercial Law.

<sup>14</sup> Zainab Salama, *Commercial Instruments in the Saudi System (Collection of Regulatory Principles on Commercial Instruments)*, p. 173.

<sup>15</sup> Article 405/2 of the Commercial Law. For further discussion, see Rashid Rashid, *ibid.*, p. 65.

<sup>16</sup> Rashid Rashid, *ibid.*, p. 65, note 4.

<sup>17</sup> Ali Jamal Al-Din Awad, *ibid.*, pp. 151–152.

<sup>18</sup> Article 404/1 of the Commercial Law.

<sup>19</sup> Article 404/2 of the Commercial Law.

<sup>20</sup> Rashid Rashid, *ibid.*, p. 66.

<sup>21</sup> Issam Hanafi, *ibid.*, p. 177.

<sup>22</sup> Rashid Rashid, *ibid.*, p. 63.

<sup>23</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 153.

<sup>24</sup> Nadia Fawdil, *ibid.*, pp. 70–71.

<sup>25</sup> Mohamed Saleh, *Commercial Instruments, Banking Operations, and Bankruptcy*, Al-I'timad Press, (no publication year), p. 71.

<sup>26</sup> Article 405, in its final paragraph, of the Commercial Law.

<sup>27</sup> Othmani Karima, "Acceptance in the Bill of Exchange," Master's Thesis, Contract and Liability Law, University of Algiers 1, 2013, p. 76.

<sup>28</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 156.

<sup>29</sup> Al-Tayyib Al-Loumi, *The Intermediary in Commercial Instruments in Tunisian Legislation*, Center for Studies, Research, and Publishing, Tunisia, 1993, p. 153.

<sup>30</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 154.

<sup>31</sup> Mohamed Saleh, *ibid.*, p. 72.

<sup>32</sup> *Ibid.*

<sup>33</sup> Mohamed Saleh, *ibid.*, p. 72.

<sup>34</sup> Ali Jamal Al-Din Awad, *ibid.*, p. 151.