

Formality in the Bill of Exchange: Obligation or Guarantee?

الشكلية في السفتجة: إلزام أم ضمان؟



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Date of transmission: 10/09/2025 date of acceptance: 09/11/2025 date of publication: 01/12/2025

Abstract: Writing plays a fundamental role in the existence of the bill of exchange as a commercial instrument, and this form entails a negotiable instrument obligation whose primary purpose is to facilitate the creation and circulation of the bill of exchange. However, it is noted that by adopting the requirement of formality, the legislator has effectively removed negotiable instruments law from the rules of free proof recognized in commercial law. It should be noted that the Central Bank of Algeria has introduced a standardized model for the bill of exchange, However, it has not eliminated the overarching regulations pertaining to the establishment of the bill of exchange.

Consequently, the formal nature of the bill of exchange serves solely as proof of the establishment of the obligation, while simultaneously acting as a safeguard against surpassing its boundaries this is all aimed at achieving a balance between the efficiency and convenience of commercial activities and the rigor of the consequences stemming from the obligation associated with the negotiable instrument.

Key words: Formality; the Bill of Exchange; Obligation; Guarantee.

المخلص : للكتابة دور جوهري في وجود السفتجة كسند تجاري، ويرتّب هذا الشكل إلزاما صرفيا، غايته الأولى هي تسهيل إنشاء السفتجة وتداولها، لذلك تعتبر ضمانا للموقعين عليها ولحامليها الشرعي، وبالتالي لا يمكن الوقوع في الخلط بينها وبين الأوراق التجارية الأخرى وما يترتب عليه الأمر بخصوص الخضوع لأحكام القانون الصرفي، لكن ما هو ملاحظ أن المشرع بإقراره للشكلية يكون قد أخرج القانون الصرفي من قواعد الإثبات الحر المتعارف عليها في القانون التجاري، مع الإشارة إلى أن البنك المركزي الجزائري قد استحدث نموذج موحد للسفتجة، لكنه في المقابل لم يقم بإلغاء الأحكام العامة الخاصة بإنشاء السفتجة؛ وهو عدم اشتراط شكل معين.

وعليه، لا تخرج الشكلية في السفتجة عن كونها دليل على إنشاء الإلزام، وفي نفس الوقت ضمانا على عدم تجاوز حدوده، وهذا كله من أجل إيجاد توازن بين سرعة الحياة التجارية وسهولتها وصرامة الآثار التي يخلفها الإلزام الصرفي.

الكلمات المفتاحية : الشكلية، السفتجة، الإلزام، الضمانة.

Introduction:

For the bill of exchange to perform its function in economic life as a credit currency, it must take a form and be written in a manner that facilitates its identification, so that no one dealing with it doubts its legal nature. In this regard, Ihering states: “Form in relation to an undertaking is like the stamp in relation to money.” Therefore, the bill of exchange is considered a formal act¹, deriving its legal existence from the fulfillment of certain conditions at its creation and throughout its life.

This is what commercial law has upheld, supporting the pillars of speed and credit in commercial transactions by adopting legal rules unfamiliar to civil law, preceded by the 1930 Geneva Conference, which unified the rules of commercial papers, including formality as a principle and characteristic upon which commercial papers, especially the bill of exchange, are based.

It should be noted that under the Commercial Code², in Articles 389 to 464, the Algerian legislator regulated the bill of exchange and granted it a detailed legal regime compared to other commercial papers. The characteristic of formality is clearly reflected in its legal nature as a commercial act by form, as stated in Articles 389 and 4/1 of the Commercial Code. Among the conditions for its validity is that it must be in writing, although the legislator did not specify the method or type of writing. However, reference may be made to Instruction No. 01-2020 dated 26/02/2020 concerning the standardization of the bill of exchange and the promissory note³, noting that the annexes to this instruction were repealed and replaced by the annexes to Instruction No. 03/2021 concerning the standardization of the bill of exchange and the promissory note. Under this latter instruction, the legislator intervened to regulate certain provisions relating to formality, adopting a standardized model for certain transactions involving bills of exchange, without abolishing the provisions contained in the Commercial Code.

¹ Mohamed Saleh, Commercial Papers, Banking Operations, and Bankruptcy, Al-I'timad Press, no publication year, p. 25.

² Ordinance No. 75/59 of 26 September 1975 concerning the Commercial Code, Official Gazette No. 78 of 1975, amended and supplemented.

³ Instruction of the Bank of Algeria No. 01-2020 dated 26/02/2020 concerning the standardization of the bill of exchange and promissory note.

- Instruction No. 03/2021 dated 21/02/2021 on the standardization of the bill of exchange and promissory note, which repealed and replaced the annexes of Instruction 01/2020 pursuant to Article 1 thereof.

From this standpoint, the following problem arises: **Does formality in the bill of exchange constitute an obligation imposed by the provisions of negotiable instruments law, or is it merely a safeguard for the signatories and the holder of the bill?**

To answer this question, we employed the analytical method to examine all texts related to formality, and the descriptive method to identify this principle within the principles of the negotiable instrument obligation.

Based on the foregoing, we divided the study plan into two sections: the first section is devoted to examining the concept of formality in the bill of exchange, and the second addresses the legal challenges of applying formality to the bill of exchange.

Section One: The Concept of Formality in the Bill of Exchange

Commercial papers are characterized as instruments, deeds, or documents, and are therefore subject to a certain formality without which such a commercial paper cannot be created or circulated in the first place. This formality consists of writing, with the requirement that it be drawn up with certain particulars; otherwise, it is void or voidable as a commercial paper, depending on the circumstances. These particulars include stating its type (bill of exchange, cheque, or promissory note) and other essential elements such as the name and signature of the drawer, as the person who creates the instrument¹.

Therefore, it is necessary to identify the bill of exchange as a commercial instrument (Subsection One), from which we can determine the characteristics of formality in it (Subsection Two).

Subsection One: Definition of the Form of the Bill of Exchange as a Commercial Instrument

Since the bill of exchange, as a commercial instrument, is executed in a specific form as a written document containing particulars prescribed by the legislator without which it is invalid in two sides, including the signature as a constituent element of the negotiable instrument obligation, this will be analyzed within this subsection.

Branch One: The Bill of Exchange as a Written Formal Instrument

¹ Tayeb Loumi, *The Mediator in Commercial Papers under Tunisian Legislation*, Center for Studies, Research and Publishing, Tunis, 1993, p. 17.

The bill of exchange is a written instrument, not merely a consensual transaction. It grants its holder the right to take special enforcement measures different from those granted by law to an ordinary creditor. The set of legal rules relating to the bill of exchange makes the undertaking arising from it burdensome for the obligor, in order to protect the holder's right¹.

The necessity of writing this condition is not expressly stated in the Commercial Code, but is inferred, since the existence of mandatory particulars that must be included in the bill of exchange presupposes that it is written. It is also inconceivable that it could be circulated if it were not in writing².

The writing must be in the body of the instrument itself, as the negotiable instrument obligation does not arise unless it is embodied in a document³ that is, it must be written. This writing must contain certain particulars prescribed by law, so that merely examining the instrument is sufficient to determine the nature and extent of the obligation of the signatory. If any of these particulars is missing, the document loses its status as a commercial paper, and the rules of negotiable instruments law no longer apply to it; instead, it is governed by the general rules⁴.

Referring to the standardized model of the bill of exchange, it appears that the legislator has adopted the writing of particulars in three languages Arabic, French, and English and has allocated blank fields for recording them. Thus, it is not merely a matter of writing in empty space; the writing must be correct and genuine. It should be noted that the model adopted under this instruction is drawn up on two sides, and it is customary for the mandatory and important particulars to be included on the front side, so as to avoid any ambiguity in the assumption of negotiable instrument obligations by the signatories later.

The same applies to endorsement, which must be written on the back of the instrument to achieve the principle of the bill of exchange's self-sufficiency and to identify the lawful holder of the instrument. If the bill of exchange becomes filled with signatures, an additional sheet is attached, which must contain a summary of it so that the original bill can be identified, as provided in

¹ Mohamed Saleh, *op. cit.*, p. 26.

² Tayeb Loumi, *op. cit.*, p. 67.

³ Article 392 of the Commercial Code.

⁴ Nadia Fodil, *Commercial Papers*, University Publications Office, 2006, pp. 15–16.

Article 396/8 of the Commercial Code¹. The same rule applies to acceptance, which must be in writing, as is the case for all negotiable instrument obligations. It must be signed by the drawee and contain words indicating acceptance, such as “Accepted,” “I will pay,” or “Good for acceptance.” The legislator has also considered the mere signature of the drawee on the face of the bill of exchange as constituting acceptance, even if it is not accompanied by any written statement.

Branch Two: The Requirement to Draw Up the Bill of Exchange with Written Particulars

The legislator has considered the bill of exchange a commercial act by form; meaning that it is not deemed a commercial act unless it takes a specific form. It has been granted the status of a commercial act due to its intensive use among merchants and because it entails negotiable instrument obligations not found in civil law. For this reason, the legislator has regulated its form through formal requirements for its validity, which are set out in the Commercial Code under the designation of “mandatory particulars.” However, the parties dealing with such a bill of exchange may add other conditions², referred to as “optional particulars,” and it may be drawn up in a single copy or in several copies.

1 – **Mandatory particulars:** Referring to Article 390 of the Commercial Code, we find that the legislator has used the phrase “the bill of exchange shall contain the following particulars,” which is an explicit formulation indicating the existence of written particulars in the bill of exchange. Notably, Articles 389 to 394 appear in Section One of Chapter One of Part One of Book Four under the title “On the Creation and Form of the Bill of Exchange.” Therefore, the eight mandatory particulars must be present in order to classify the instrument as a bill of exchange. Without these particulars, it would be impossible to distinguish a valid instrument from one that is correctable, or from a void instrument as a commercial paper producing negotiable instrument obligations³.

2 – **Optional particulars:** The inclusion of optional details by the legislator is intended solely to enhance the functionality of the bill of exchange—from its inception to its circulation and the clarification of the holder’s rights—without

¹ Béchir Mahmoudi, Lectures on Commercial Papers, Bankruptcy, and Judicial Settlement, delivered to third-year Private Law students, Faculty of Law, University of Ouargla, 2020–2021, p. 25.

² Tayeb Loumi, op. cit., p. 67.

³ Article 390 of the Commercial Code, paragraphs 2, 3, and 4.

violating the inherent nature of the bill of exchange or diminishing the instrument's value. Entities engaging with the bill of exchange are permitted to incorporate any details they desire, as long as these do not violate public order or morals, alter the fundamental characteristics of the bill of exchange, or compromise its self-sufficiency.. These particulars are unlimited in number; some are permitted by jurisprudence, others are stipulated in law¹.

These particulars are referred to as conditions, including: conditions relating to payment by the drawee (such as the designated place of payment, the condition of recourse without expenses or without protest), the condition of acceptance or non-acceptance, conditions relating to the addition of new debtors (aval), conditions of acceptance and payment by intervention, conditions relating to the transfer of the bill of exchange (such as “not to order,” or prohibition of further endorsement), and conditions relating to multiple counterparts².

Since the drawer’s signature is the event that creates the bill of exchange, it must conform to the legal and formal requirements of the instrument. The 1930 Geneva Convention on Bills of Exchange and Promissory Notes placed significant emphasis on the formality of the negotiable instrument obligation³. If the drawee fails to pay at maturity, and the instrument lacks the drawer’s signature, the document becomes worthless. The legislator has required that the name of the drawer or the name of the person to whom payment is to be made be in handwritten form and/or accompanied by a seal⁴, and it is immaterial whether the signature is by hand or by stamp.

Accordingly, the signature is not required to be in a specific place on the bill of exchange, but it is customary for it to appear at the bottom after the mandatory particulars, so that it may be said to have been issued by the drawer. Nevertheless, the signature is valid if placed at the top or in the middle of the instrument⁵. It should be noted that Instruction No. 03/2021 concerning the

¹ Béchir Mahmoudi, *op. cit.*, p. 19.

² Rachid Rachid, *Commercial Papers, Bankruptcy, and Judicial Settlement*, University Publications Office, 2008, pp. 22–23.

³ *Ibid.*, p. 14.

⁴ Annex 2 of Instruction 01/2020, *op. cit.*, p. 6.

⁵ Nadia Fodil, *op. cit.*, p. 22.

standardization of the bill of exchange and the promissory note has provided a designated space for the signature at the bottom right of the instrument¹.

Branch Three: Multiple Counterparts and Copies of the Bill of Exchange

Within the framework of formality, the issue arises as to the possibility of drawing a bill of exchange in several counterparts or copies, which necessitates distinguishing between a counterpart and a copy:

A counterpart is an original version of the bill of exchange, which may be reproduced in multiple counterparts, provided they are numbered and identical, with the requirement to include the phrase: “Payable under this first counterpart,” so that the holder is aware of the order of the copies. While the default is to draw the bill of exchange in a single counterpart, Algerian commercial law permits it to be drawn in several counterparts, and Article 456 stipulates that “payment of one counterpart discharges the debtor,” even without requiring the presentation of the remaining counterparts unless the drawee has accepted more than one counterpart, in which case he may remain liable to each holder in good faith.

A copy, conversely, serves as a duplicate of the original document. Payment cannot be executed solely based on the copy; it requires authentication against the original. Creating multiple copies of the bill of exchange enables reliance on the copy to establish ownership in cases of loss or theft. Regarding modifications to the bill of exchange such as alterations to the amount, date, or the name of any involved party Article 460 of the Commercial Code² addresses this issue, stipulating that liability is contingent upon the timing of the signatories' signatures: those who signed prior to the alteration are liable only according to the original text, while those who signed subsequent to the alteration are liable according to the modified text.

It should be noted that if the counterparts are not numbered or their number is not indicated, each counterpart is treated as an independent instrument, which may lead to repeated payment and the creation of obligations

¹ Annex No. 02 of Instruction 03/2021 on the standardization of the bill of exchange and promissory note, op. cit., p. 2.

² Houria Souiki, Lectures on Commercial Papers, Bankruptcy, and Judicial Settlement, delivered to third-year Private Law students, Faculty of Law, University of Ain Temouchent, 2020–2021, pp. 8–9.

exceeding the original, thereby undermining the principle of legal certainty in commercial circulation¹.

Subsection Two: Characteristics of Formality in the Bill of Exchange

The formality of the bill of exchange has several characteristics that distinguish it from other commercial papers. These may be summarized as follows: writing in a manner that ensures its self-sufficiency; the legislator's intervention in certain transactions by regulating bills of exchange according to a standardized model; and the requirement that the written instrument must not lack the signature, as an essential mandatory particular, the omission of which renders the bill of exchange void.

Branch One: The Requirement to Write the Bill of Exchange and Achieve Its Self-Sufficiency

The Geneva Conventions regarding Bills of Exchange set forth the principle of written documentation as a fundamental aspect of the law governing negotiable instruments. Each instrument is required to be presented in a designated format, which includes specific details that characterize the instrument's nature and type, the involved parties, its monetary value, the issuance date, the payment date, and additional information². This signifies a shift away from oral agreements³.

It is not sufficient for the bill of exchange to be embodied in a written instrument; it must also contain the mandatory particulars specified by the legislator in Article 390 of the Commercial Code, which number eight⁴. Among

¹ Ibid.

² Maamar Chenouf, Commercial Instruments and Conflict of Laws: Application of Article 21 of the Algerian Civil Code and the Geneva Convention on the Uniform Law of Bills of Exchange, *Journal of Law and Human Sciences*, Vol. 8, No. 1, 2015, p. 278.

³ Mohamed Ahmed Siraj & Hussein Hamed Hassan, *Commercial Papers in Islamic Law*, Dar Al-Thaqafa for Publishing and Distribution, Cairo, 1977, p. 46

⁴ Article 390 of the Commercial Code stipulates the mandatory elements of a bill of exchange, which are:

1. The term "bill of exchange" in the body of the instrument and in the language used for its drafting;
2. An unconditional order to pay a specific amount;
3. The name of the person who must pay (the drawee);
4. The maturity date;
5. The place of payment;
6. The name of the payee or the person to whom payment is to be made;
7. The date and place of issuance;
8. The signature of the drawer.

these is the requirement to include the word “bill of exchange” in the body of the instrument in the same language used in its drafting, for example: “Pay against this bill of exchange.” The rationale for including this particular is to explicitly identify the instrument as a bill of exchange and not another type of instrument, while at the same time drawing the attention of the signatories to the importance of the transaction they are undertaking, namely the creation of a negotiable instrument obligation¹.

The bill of exchange is generally drawn up in private form, although it may be drawn up in authentic form, which is rare². The requirement of writing does not necessitate a specific type of script; it may be handwritten or follow a prescribed model, with the drawer merely signing or stamping it. The drawer may write it himself or have it written by another³.

For the written document to be considered a bill of exchange, it must be self-sufficient in indicating that it is a bill of exchange; meaning that it requires no other evidence or proof beyond what is contained in the document itself.

Thus, the matter does not require a formal format, but the legislator has organized a specific format in accordance with Instruction No. 01-2020 dated 26/02/2020 concerning the standardization of the bill of exchange and the promissory note. This instruction consists of 13 articles and annexes related to both instruments. Annex II of Instruction No. 03/2021 pertains to the explanation of each location where data is inserted, such as the name of the instrument, place of signature, name of the beneficiary, among others, as well as the date of issuance in eight digits: day, month, and year.

Therefore, the drawer creates the bill of exchange for his personal interest, as the instrument serves him as a means of payment and credit. However, the legislator considers its issuance towards third parties as an abstract act and does not concern itself with the reason for issuance⁴. The bill of exchange requires no evidence to prove its content; it is a self-sufficient instrument without reference to any other document. It is unnecessary to provide justification for the relationships among the parties that led to its creation or the transfer of the rights contained within ⁵. Consequently, the standard practice is to have the writing

¹ Nadia Fodil, op. cit., p. 22.

² Mohamed Saleh, op. cit., p. 25.

³ Tayeb Loumi, op. cit., p. 68.

⁴ Rachid Rachid, op. cit., p. 28.

⁵ Mohamed Ahmed Siraj & Hussein Hamed Hassan, op. cit., p. 50.

contained within the same document, while the exception arises in the form of an attachment, which represents a deviation from the principle of self-sufficiency in specific operations like endorsement and guarantee¹. The formality of the commercial instrument is not an end in itself but aims to ensure that the instrument is self-sufficient².

Branch Two: The Intervention of the Central Bank in Defining a Unified Model for the Bill of Exchange

The Central Bank of Algeria, pursuant to Instruction No. 01-2020, adopted the physical specifications of the bill of exchange and amended its annex, replacing it with Instruction No. 03/2021. This represents a new direction adopted by the legislator in regulating bills of exchange and promissory notes. It mandates the use of a specific physical format for the commercial paper (bill of exchange) according to defined standards in terms of writing, physical specifications, paper quality, color, nature of the print, and the standards related to folding and sending the instrument³.

Referring to Annex 4 of Instruction No. 01/2020, we find that it adopts a unified model for the bill of exchange with two faces and pre-printed data. Thus, the adopted format closely resembles that of a cheque, utilizing both sides of the instrument: the front for all mandatory and optional data, and the back exclusively for endorsements. This clear specification and intervention by the legislator serve a practical purpose by avoiding many issues related to signature confusion and facilitating the identification of the legitimate holder through verification of the validity and legality of the uninterrupted chain of endorsements, even if the last one is in blank⁴.

Regarding the obligation to use the unified model in all cases where the bill of exchange is used as a commercial paper, Article 10 of Instruction No. 01/2020 stipulates that banks, Algeria Post, and the Public Treasury, as financial institutions, are required to issue bills of exchange according to the unified model and in formats that conform to the physical specifications outlined in the instruction. Accordingly, the obligation to adopt the model is limited to the aforementioned financial institutions.

¹ Mohamed Saleh, op. cit., p. 46.

² Béchir Mahmoudi, op. cit., p. 6.

³ Annex No. 1 of Instruction 01/2020, op. cit., p. 6.

⁴ Annex No. 4 of Instruction 001/2020, p. 13. Note: Instruction No. 01/2020 dated 26/02/2020 concerning the standardization of the bill of exchange and promissory note was repealed and replaced by Instruction No. 03/2021 dated 21/02/2021, as stated in Annex 2 thereof.

However, as is known, according to Article 4/1 of the Commercial Code, bills of exchange are commercial acts by form, regardless of the status of their parties¹. Therefore, they may be used by merchants and non-merchants, individuals or legal entities. Consequently, persons other than financial institutions whether merchants or not are not obligated to adopt the unified model. This leads us to conclude that the legislator, by virtue of the aforementioned instruction and the Commercial Code, did not mandate the use of the unified model for all bills of exchange. Nevertheless, there is no harm in adopting it, especially since it is drafted in a standardized format that makes it difficult to omit any mandatory data or to record it inconsistently.

Branch Three: Signatures as Evidence of the Emergence of Exchange Obligations

The adoption of writing as a commitment and a condition for the validity of the bill of exchange is evidence of its value as a commercial paper that generates exchange obligations. These obligations, in turn, require that their means of proof be in writing².

The temporal and spatial scope of the bill of exchange is primarily determined by what is stated therein. The date written on it serves as evidence against its parties and against third parties, unless proven otherwise. Since the date of issuance must be mentioned, the place of issuance must also be indicated. If the place of issuance is not mentioned, it is considered to have been issued at the location next to the drawer's name³, as stated in Article 390 of the Commercial Code, to enable identification of who undertook the exchange obligation and who neglected it.

Accordingly, the signature on the bill of exchange constitutes the event that creates the exchange obligation and its consequences. Through it, the document transitions from an ordinary paper to a commercial instrument, and from a commercial instrument transferred by delivery to one transferred by endorsement, with the other signatories bound by it, each according to their role and commitment. However, formality is not limited to the creation of the commercial paper alone; it is also required for all legal actions related to it, such

¹ Article 389 of the Commercial Code: "The bill of exchange is considered a commercial act regardless of the persons involved."

² Tayeb Loumi, op. cit., p. 17.

³ Nadia Fodil, op. cit., p. 23.

as acceptance, guarantee, and endorsement¹. Therefore, every obligation related to the bill of exchange must be written and specified unless the law explicitly exempts it, such as endorsement².

By virtue of the signature, which must be written—and sometimes the signature alone suffices, as in the case of acceptance or endorsement—even in the absence of an indicative phrase, unless proven otherwise.

Section Two: Legal Challenges in Applying Formality to the Bill of Exchange

What distinguishes the bill of exchange is its particular formality, so that those dealing with it are aware that by signing it, they subject themselves to strict exchange rules³. And since the instrument is, in essence, a relationship between two or more parties, it is only natural that it be recorded in a written document containing numerous data, the omission of which may result in the complete loss of the instrument's value or its transformation into a document governed by general rules⁴.

This leads us to conclude that activating formality in the bill of exchange has several effects on the rules of exchange obligation (Section One), which ultimately necessitates an evaluation of formality in the bill of exchange (Section Two).

Subsection One: Effects of Formality on the Application of Exchange Obligation Rules

Formality clearly defines the legal boundaries of exchange obligations for each party to the bill of exchange, both prior and subsequent, as well as its role in identifying the rightful holder entitled to payment (legitimate bearer) and others with derivative rights.

Branch One: Exchange Obligation with Respect to the Drawer and Every Signatory to the Bill of Exchange

The principle of exchange obligation and its independence means that every obligation arising from the commercial paper is a standalone commitment. It generates a new obligation against each signatory, known as an exchange

¹ Saad bin Turki bin Mohammed Al-Khathlan, *Legal Provisions of Commercial Papers in Islamic Jurisprudence*, 1st ed., Dar Ibn Al-Jawzi, 2004, p. 33.

² Tayeb Loumi, op. cit., p. 68.

³ Mohamed Saleh, op. cit., p. 46.

⁴ Maamar Chenouf, op. cit., p. 282.

obligation¹, independent of other obligations arising from the same document, whether issued by prior or subsequent signatories. In other words, every person who signs the commercial paper—whether as drawer, endorser, guarantor, or acceptor—undertakes a separate exchange obligation that does not depend on the validity or invalidity of other signatures². If any signature is affected by a defect such as forgery, lack of capacity, or error, this does not impact the validity of other legally sound obligations, which remain effective and enforceable. The holder of the commercial paper has the right to pursue any of the obligors under it if the original debtor fails to pay its value on the due date³.

Branch Two: The Legal Relationship Between the Status of the Legitimate Bearer and the Instrument

In the bill of exchange, the legitimate bearer is the person who legally possesses the instrument through an uninterrupted chain of endorsements, even if the last one is in blank. This person is entitled to receive its value upon maturity. The legislator aimed to balance the diverse interests represented in the bill of exchange: the strictness of the obligation placed on the debtor must correspond with the creditor's attentiveness. To realize this objective, the law mandates that the bearer assert their rights and perform the responsibilities assigned to them within the designated timeframes, failing which they may be deemed negligent and lose their right⁴. On the other hand, the law did not intend to leave the positions of the obligors under the bill of exchange suspended for an unreasonable period. Therefore, it considered the best way to achieve this objective was to set short timeframes for the life of the exchange obligation⁵.

Subsection Two: Evaluation of Formality in the Bill of Exchange

Formality constitutes an explicit departure from the commonly accepted principle of free evidence in commercial law. Nevertheless, the legislator intervened and surrounded it with legal solutions whenever practical issues arose concerning the drawbacks of formality. This study is limited to the case of the loss of multiple bills of exchange issued in a single copy or in several copies, whether accepted or not, within the scope of this section.

¹ Rachid Rachid, *op. cit.*, p. 8.

² Saad bin Turki bin Mohammed Al-Khathlan, *op. cit.*, p. 34

³ *Ibid.*

⁴ Forfeiture is the penalty incurred by a negligent holder who fails to observe the deadlines set by law for certain obligations such as presentation for acceptance or protest drafting.

⁵ Béchir Mahmoudi, *op. cit.*, p. 65.

Branch One: Departure from the Principle of Free Evidence in Commercial Law

Writing is a fundamental element of the instrument; it cannot be valid without it. If the document lacks the attribute of writing or is missing one of its mandatory data elements that cannot be substituted, it is not considered a commercial instrument and is therefore not subject to the provisions of exchange law¹. Writing here is not merely a means of proving the existence of the exchange obligation; it is a formal and essential condition for the validity of the bill of exchange². The legislator's requirement for writing serves important purposes, such as affirming the self-sufficiency of the commercial paper itself, without resorting to any other legal source or relationship. The formality mandated by law is not limited to the creation of the commercial instrument but extends to its entire commercial life.

It is not required that the commercial instrument be written in the handwriting of the person obligated by it; it may be printed or written by another person. In such cases, it suffices for the obligor to affix their signature, stamp, or fingerprint for it to be considered valid in their regard. Formal writing is not required³, yet writing cannot be substituted for evidentiary purposes by any other means⁴.

Since the bill of exchange, upon its creation, bears only the signature of the drawer, it will, during its brief lifespan, be filled with new signatures such as that of the drawee who accepts it, and sometimes the signature of the guarantor or the holder who endorses it. Each signatory is bound by their signature to pay the amount of the bill, and each of them undertakes a separate obligation due to the principle of signature independence⁵.

Writing also serves to identify the maturity date, whether explicitly fixed or implied, as well as the contractual obligations arising from the inclusion of conditions in the form of optional data, such as a presentation clause, a clause of non-presentation for acceptance, or even presentation on a specific date. Not to be overlooked is the practical benefit of exonerating the drawee who has fulfilled the payment and recovered the instrument.

¹ Maamar Chenouf, op. cit., p. 279.

² Tayeb Loumi, op. cit., p. 67.

³ Béchir Mahmoudi, op. cit., p. 3.

⁴ Ibid., p. 74.

⁵ Rachid Rachid, op. cit., p. 60.

Branch Two: Adopted Solutions for Formality Defects (Case of Loss)

Although exchange law adopts formality as a condition for creation and validity, it does not neglect issues that may arise from its defects, such as damage or loss of a bill of exchange¹ whether accepted or not issued in a single copy or in multiple copies. This raises concerns about considering it as self-sufficient evidence, which may endanger the rights of creditors who signed the bill. Solutions have been provided for these issues. Referring to Article 420 of the Commercial Code, if the lost bill is unaccepted and has multiple copies, the holder may claim payment based on another copy in their possession. However, if the lost copy is the accepted one, the drawee may only pay the holder upon a court order. In this case, the holder must present a guarantor who ensures the return of the bill's value to anyone who may later appear as the new legitimate bearer. The guarantor's obligation expires after a limitation period of three years if no one appears².

If the bill of exchange was issued in a single copy whether accepted or not and it is lost, or if all copies are lost, the law offers the holder two options: either to obtain a court order and prove ownership of the bill through their commercial records while presenting a guarantor, as per Article 422 of the Commercial Code; or to obtain a new copy by contacting the endorser who endorsed the bill, through whom they reach the drawer, who issues a bill identical to the original and signs it. This new bill is then presented successively to all signatories of the original bill, thereby obtaining endorsements identical to those on the original, enabling payment based on it. This method is used if the remaining time before the maturity date is sufficient to complete the process³.

Conclusion

In conclusion, this research paper demonstrates that formality in the bill of exchange, as a foundational principle of exchange law, is undeniably beneficial. It plays a vital role in facilitating the creation and circulation of the instrument as a commercial paper, with its true purpose being to instill greater confidence in its use and to render it self-sufficient in identifying all parties obligated by it without the need for any external reference. This is what exchange law refers to as the self-sufficiency of the commercial paper. Indeed, there can be no

¹ Several practical issues have been addressed legislatively, such as those related to alteration, counterfeiting, theft, and forgery, as stipulated in Article 460 of the Commercial Code.

² Article 421 of the Commercial Code.

³ Article 424 of the Commercial Code.

discussion of a bill of exchange if it is not written, nor can its existence be proven without it. The recording of mandatory data is indispensable, and when necessary, even optional data may be included in the form of contractual conditions.

Based on this research, we recommend the following:

- The legislator should abandon the notion of material evidence for commercial papers and promote electronic commercial instruments, while reverting to the principle of free evidence in commercial law.
- The obligation to use the unified model for the bill of exchange, as stipulated by Instructions 01/2020 and 03/2021 issued by the Central Bank, should not be limited to financial institutions. Given its advantages, it should be generalized to all users and stakeholders.

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