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### The peculiarities of the transfer rights according to bill of exchange

Some peculiarities of the transferring rights according to bill of exchange are considered in the article. There are also some controversial issues in bill of exchange circulation dealing with legal effect, arising the transfer rights on bill of exchange in accordance with volume and content of transferring rights, committing by different types of endorsement, considered by the legislation on bill of exchange. Also in the article attention is paid to the issues dealing with the parties' responsibility of bill of exchange liability.

**Key words:** endorsement, cession, allonge, endorser, endorsee, cedent, cessionary.

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#### Вексел бойынша құқық беру ерекшеліктері

Мақалада вексел қатынастары бойынша туындайтын құқықтардың мазмұны анықталып, оның азаматтық-құқықтық айналымға қатысушылардың арасындағы есеп айырысу мүмкіншіліктеріне ықпалы зерделенген. Бүгінде еліміздің құқық пайдалану тәжірибесінде вексел арқылы берілетін құқықтардың мазмұны мен көлемі жағынан туындайтын заңи салдарлар белгілі дәрежеде анықталмаған. Осыған байланысты мақалада векселдің құқықтық табиғатын анықтауда белгілі батыл қадамдар жасалып отыр. Соның бірі, әрине векселдік міндеттемеге қатысушылардың жауапкершілігіне байланысты туындайтын сұрақтар. Аталған мәселелер де қажетті деңгейде зерделеніп, олар бойынша да тұжырымдар жасалған.

**Түйін сөздер:** индоссамент, цессия, аллонж, идоссант, индоссат, cedent, цессионарий.

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#### Особенности передачи прав по векселю

В статье рассматривается содержание особенностей передачи прав по векселю. В правоприменительной практике вексельного обращения нередко возникают спорные вопросы, связанные с юридическими последствиями передачи прав по векселю по объему и содержанию передаваемых прав, совершением различных видов индоссаментов, предусмотренных вексельным законодательством, разграничением индоссаментов от цессии. А также в статье обращено внимание на вопросы, связанные с ответственностью участников вексельных обязательств.

**Ключевые слова:** индоссамент, цессия, аллонж, идоссант, индоссат, cedent, цессионарий.

Bill of exchange relations development makes us draw our attention to issues concerning legal guarantee of realization of the parties right, where ways of protection the holder's right are also considered to be one of the main factors related to it. There are also some controversial issues in bill of exchange circulation dealing with legal effect, arising the transfer rights on bill of exchange in accordance with volume and content of transferring rights, committing by different types of endorse-

ment, considered by the legislation on bill of exchange. That is why our research is aimed to investigate the legal nature of an endorsement.

In accordance with the Republic of Kazakhstan legal norms «About the circulation of bills of exchange» [1] (see later- Law) endorsement must be written on the back of the bill of exchange or on the slip attached thereto (allonge), authenticating the cession to another person of the bill of exchange. From the foregoing, we came to know that the

meaning of «endorsement» deals with relevant inscription on bill (transferring inscription), on the other hand, arising from writing inscription on bill of exchange, it constitutes legal effect which means cession to another person concerning the bill. Thus, cession has general and civil sense, appearing in the process of altering person in liability and one form is deemed to be order security by means of transferring inscription (endorsement).

Order and legal effect of transfer rights on order security to align the Civil code of the Republic of Kazakhstan are equal according to the legal context, defined by certain laws. Besides this, it would be significant to mention that bill of exchange is considered to be order security according to the most of government legislations. General and civil norms, regulating the transfer right on order security are used in legal materials to investigate the nature of endorsement on bill of exchange. From the foregoing, we want to pay our attention to the possibilities of implementing general and civil law analogy requirements concerning identifying some legal effect of the accomplishment endorsement according to the bill of exchange.

While transferring person's right on order security, the endorser undertakes responsibility not only for existence of the right, but also for its carrying out. According to Civil Code of the Republic of Kazakhstan (Article 132 (3)) «The right associated with order securities shall be conveyed by means of making on that security a conveyance inscription, the endorsement. The person who transfers the rights associated with an order security (endorser) shall be liable not only for the existence of the right but also for its exercise.» On the basis of the law (Article 13) an endorsement transfers all the rights arising out of a bill of exchange.

Despite the fact that endorsement on bill of exchange authenticates the cession according to bill of exchange, the main characteristics of this endorsement is that it is a special mean of transfer rights to align legislation on bill of exchange. And it has specific distinctive peculiarities from the cession, identified in accordance with general and civil norms.

Before making legal analysis concerning peculiarities of fulfillment endorsement on bill of exchange and its types, it would be necessary to compare definitions between «cession» and «endorsement» to figure out similarities and deduction between them.

Contemporary legal materials give us several deductions between cession and endorsement,

where a number of scholars name the distinctive features towards two terms. Like for instance, scholars likewise L.G. Efimova, L.V. Novosselova show the main deductions between the terms by giving the following definitions:

1) cedent is responsible before a new creditor for the invalidity of conveyed him demand, but endorser is reliable before an endorsee and next bill of exchange holders for the validity of demand, and for its fulfillment.

2) Endorsee takes demand on endorsement, where is no right defects from previous predecessors, whereas, in contrast cession has all defects according to the bill inherited from previous predecessors. [2]

Another scholar A.A. Vishnevskipoints out differences between the cession and endorsement, saying that «in the process of cessioncedent, yielding demand to the cessionary, is responsible only to the invalidity of the transferred demand, but not to its fulfillment for realization, whereas endorser, conveying bill of exchange to endorsee is responsible to the latter not only for its validity, but also for the fulfillment of transferring demand, taking role of a recourse debtor towards the endorsee» [3].

V.A. Belov enumerates three basic deductions between the definitions. He says that the main deduction deals with the legal directions diversity, legal purpose of the transactions; real deduction is deemed to be legal characteristics and procedure effect of legal succession, but formal deduction deals with specific external decoration of deductions with legal characteristics [4].

Taking into account these classifications, firstly, we want to pay our attention to the key deductions between the cession and endorsement, making up different legal directions of the transactions.

Law (Article 10) reads that every bill of exchange, even if not expressly drawn to order, may be transferred by means of endorsement. The purpose of committing endorsement is transfer rights on bill of exchange, the result which is occurrence of the rights in accordance with the bill of exchange. The Civil code of the Republic of Kazakhstan (132 (3)) reads that an endorsement executed on a security shall transfer all the rights certified by the security to the person to whom or by whose order the rights associated with the security (of the endorsee) are transferred.

Thus, according to legal context endorsement is a transaction, dealing with transferring rights on bill of exchange while a person is taking bill of exchange liability.

Well-known lawyer and civilest G.F. Shershenevich inscription that if a person, transferring bill is aimed to transfer such right to another person then it is deemed to be an endorsement [5].

Thus, according to the P.P. Tsitovich one of the main characteristics of bill of exchange deals with endorsing, pointing out two functions of endorsement:

a) endorsing function; and b) guaranteeing function. [6] In first case transferring bill is not deemed to be endorsement, which is characterized as unbroken set of endorsement. In second case endorser undertakes responsibility for payment and acceptance of the bill of exchange.

Legal effect of transfer rights on bill deals with the following circumstances:

1) this type of endorsing (transferring) gives right to endorsee to demand fulfillment liabilities from parties. 2) endorser is responsible before holders for the fulfillment the demand rights concerning bill of exchange. In first case endorsee, being as decent holder of a bill of exchange, has rights in accordance with bill of exchange context, independent from the event, as removal bill of exchange from endorser's legal possession. In second case, an endorser is deemed to be the drawer who undertakes bill liability, ensuring payment and acceptance according to bill of exchange, except circumstances, when he is free from the responsibility, just by writing relevant inscription «without endorsing me back».

As it was mentioned above, endorser is responsible not only for validity, but also for fulfillment bill liability, whereas in contrary cedent is responsible before new creditor for invalidity of demand, having endorsed to him, but not for fulfillment the demand by debtor, except circumstances, when cedent undertakes mandate for the debtor before a new creditor (The Civil code of the Republic of Kazakhstan (Article 347)). The person who transfers the rights associated with an order security (endorser) shall be liable not only for the existence of the right but also for its exercise. (The Civil code of the Republic of Kazakhstan (Article 132(3))).

Endorser is responsible for acceptance and payment if there is omission of any back conditions. However, endorser is free for the responsibility before parties where bill of exchange was endorsed by the means of protest for accomplishment for further endorsement in favour for them. There should be mentioned phrase such as «without endorsing me back» or «no responsibility»

This situation arises from the fact that endorsement is a one-sided deal, since the effect is bound to the endorser to due to the specifics of the legal nature of bill of exchange.

Endorsee (the purchaser by endorsement) receives demand, free from flaws (defects) and predecessors, and he is deemed to be an independent creditor where is unacceptable to make any defences, and the assignee (purchaser by cession) receives a request with all disadvantages inherent rights predecessors, that is, the extent and under the conditions that existed at the time of vesting, unless otherwise stipulated by legislative acts or the contract. Thus, the scope of rights depends on the successor rights predecessor. Endorser is responsible before any acquiring person of the bill of exchange, each liable person undertakes joint responsibility, but cedent is bound before successor.

G.F. Shershenevich emphasizes another deduction between cession and endorsement, which means transfer rights according to liability, must be grounded, but transfer rights according to bill of exchange can be abstract [7]. From the foregoing, it could be concluded that bill of exchange is deemed to be abstract and one-sided liability of a debtor to draw payment on bill of exchange, since bill of exchange has been endorsed. In addition to this, it has unconditional character, so actually bill of exchange the holder must be drawn a determinate sum of money at the time of payment. And cession is deemed to be civil and legal transaction, which is made under conditions likewise suspensory or resolatory.

Creditor's rights on liability can be transferred to another person to align legislative acts. As well as this, there is no cession on liability, where personality of a creditor means substantial sense for the debtor.

In addition to this, there is formal deduction between cession and endorsement. There is enough one signature on bill of exchange for endorsement, while committing cession it is necessary to make written contract by signing more than two parties of the deal.

An endorsement must be written on the bill of exchange or on a slip affixed thereto (allonge). Cession, based on transaction can be done in written form, separated from the document and there appears the right to the third person concerning bill of exchange. According to the participating sides a cession multisided transaction, but endorsement is considered to be one sided transaction.

Cession is done in favour of a certain person, while endorsement is made not only in favour

of a certain person, but also is bound to include statements of order or should be endorser as bearer of bill of exchange. The thing with the endorsement is that it is deemed to have unbroken line of endorsement on bill of exchange. In fact the endorser of each endorsement is the endorsee according to the previous endorsement.

Legislation on bill of exchange defines several types of endorsement. It can be inscribed bill, bill of exchange by order and at sight. Bill of exchange at sight constitutes an endorsement in blank.

An endorsement must be written on the bill of exchange or on a slip affixed thereto (allonge). It must be signed by the endorser. The endorsement may leave the beneficiary unspecified or may consist simply of the signature of the endorser (endorsement in blank). In the latter case, the endorsement, to be valid, must be written on the back of the bill of exchange or on the slip attached thereto (allonge).

An endorsement transfers all the rights arising out of a bill of exchange. If the endorsement is in blank, the holder may:

- 1) Fill up the blank either with his own name or with the name of some other person;
- 2) Re-endorse the bill in blank, or to some other person;
- 3) Transfer the bill to a third person without filling up the blank, and without endorsing it (Law (Article 13)).

Next type of endorsement is an endorsement by procuration. This endorsement means inscription on the bill, written by the holder by giving authority to the endorsee to exercise bill law demand instead of endorser. In accordance Law (Article 17) if the endorsement contains the statements 'value in collection' ('valeur en recouvrement'), 'for collection' ('pour encaissement'), 'by procuration' ('par procuration') or any other phrase implying a simple mandate, the holder may exercise all rights arising out of the bill of exchange, but he can only endorse it in his capacity as agent. It means this endorsement does not transfer neither property right on bill nor demand rights, arising from the bill to a new creditor, but it is determined by the person, who acts according to endorser interests on endorsing determine actions (mandate). As well as this, a representer does not have rights to transfer the bill.

In this case the parties liable can not set up against the holder defences founded on their personal relations with the endorser, unless the holder, in receiving the bill, has knowingly acted to the detriment of the debtor.

The holder has rights to present demand on payment to the liable parties, and to be drawn on bill, and in case of non payment he can protest on bills on the basis of an endorsement by procuration.

G.F. Shershenevich says that an endorsement by procuration is expressed on bills by having authority to act in favour of other person's interest. From here, it goes without saying the content of the inscription, where is mentioned things likewise authority, authority's name and signature of an endorser by procuration.[8] According to endorsement by procuration the holder of the bill is deemed to be an endorser by procuration, and rights on bill are transferred to the authority person.

A pledge endorsement appears when there an endorsement which contains statements «value in security», «value in pledge» or any other statement implying a pledge, In this case the holder exercises all the rights arising out of the bill of exchange, but an endorsement by him has the effects only of an endorsement by an agent. (Law, Article (19))

This endorsement as an endorsement by procuration does not have right to transfer claim of property for bill and claim to demand on bill. The endorsement establishes pledge right of an endorsee on bill, belonging to endorser. Though, this right is unlike to pledge right according to general and civil norms and endorser cannot exercise rights, according to civil legislation, regulating pledge. So this guaranteed endorsement is independent one.

The parties liable of pledge endorsement cannot set up against the holder defences founded on their personal relations with the endorser, unless the holder, in receiving the bill, has knowingly acted to the detriment of the debtor.

An endorsement after maturity is an endorsement, having endorsed after fixed date of payment, has the same effect as the previous endorsement. Nevertheless, an endorsement after protest for non-payment, or after the expiration of the limit of time fixed for drawing up the protest, has effect of ordinary cession. It means that the endorsement does not obligate endorser liabilities on bills, who has only rights to demand all the rights concerning the bill with defects.

According to legal materials, there is the term «Recta endorsement» which means an endorsement containing an order for ban of transferring the bill of exchange to another person with the «recta» clause. Actually, recta endorsement is new endorsement by the means of adding statement «not to order» or any other phrase implying discharging endorser's responsibility concerning bills before next holders.

In this case bill is endorsed according to forms and effects of ordinary cession.

In this case, the rights of the first creditor are transferred to new creditor with the same amount and conditions, having been existed till the moment of transferring rights. The debtor has rights against demands of a new creditor's defences, what he had against the first creditor till the moment of getting notification on transferring rights concerning liabilities to a new creditor.

Transfer rights on bills can be done whether with the help of contract of civil and legal cession or by relevant phrase of cedent and cessionary on bill. This way new possessor gains the same rights what the endorser has possessed. In other words, endorsing bill transactions must be regulated according to bill legislation norms, taking into consideration their specific features, besides this these transactions are regulated by general norms of civil law, identifying order and ground of transaction fulfillment and carrying out the liabilities.

Protection of parties' rights in bills relations is based on solidarity of bill liability of all persons according to given, accepted, endorsed bill of exchange or written aval before holder. However, according to its volume bill responsibility is differentiated from bill solidarity, determined to align general and civil norms, concerning specific features of bill of exchange liabilities of direct recourse bill debtors. So these issues are not covered in this research as it considered to be the subject of another investigation.

There is legal project on amendments and additions to the Civil code of the Republic of Kazakhstan concerning bills role as the security is being discussed. This situation allows to implement civil law conditions, identifying legal statute of order securities in legal regulation of bill circulation. Investigating legal nature endorsing of bills in depth as one of the basic directions in development bill which allows legal implementation in practice all possibilities, dealing with endorsement to align bill legislation.

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