

## **PAYMENT INSTRUMENTS**

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

### **Applicable legislation in this field**

- NBR Regulation no.8/1994 on payment order, published in the Official Gazette no. 119bis /14<sup>th</sup> of June 1995
- NBR Regulation no. 2/1996 on operations with cash, published in the Official Gazette no. 34/16<sup>th</sup> of February 1996
- Circular letter no. 33/1997 on modification of cash ceiling stipulated at the Art.8 of the National Bank of Romania Regulation no.2/1996, published in the Official Gazette no. 379/23<sup>rd</sup> of December 1997
- Order of the people's lawyer no. 52/2002 on the approval of minimum security requirements of the processing of personal data, published in the Official Gazette no. 383/5<sup>th</sup> of June 2002
- NBR Regulation no.4/2002 on transactions performed through electronic means of payment and relations between the participants to these transactions, published in the Official Gazette no. 503/12<sup>th</sup> of July 2002
- Law no.365/2002 on electronic commerce, published in the Official Gazette no. 483/5<sup>th</sup> of July 2002
- Government Decision no. 1308/2002 on approval of Methodological Norms for the enforcement of the Law no.365/2002 on electronic commerce, published in the Official Gazette no. 877/5<sup>th</sup> of December 2002
- NBR Regulation no. 4/2002 on transactions performed through electronic means of payment and relations between the participants to these transactions, published in the Official Gazette no. 503/12<sup>th</sup> of July 2002

- Technical norms no. 9/1994 on cheque, published in the Official Gazette no. 119bis/14<sup>th</sup> of June 1995
- Technical norms no. 10/1994 on bill of exchange and promissory note published in the Official Gazette no. 119bis/14<sup>th</sup> of June 1995
- Law no. 58/1934 on bill of exchange and promissory note published in the Official Gazette no. 100/1<sup>st</sup> of May 1934
- Law no. 59/1934 on cheque, published in the Official Gazette no. 100/1<sup>st</sup> of May 1934
- Law no. 58/1998 – Banking Law, published in the Official Gazette no. 121/23<sup>rd</sup> of March 1998

All the commerce acts and facts on the Romanian territory, having as their object transactions with means of payment are subjected to Romanian law.

## ***I. Electronic means of payment***

Transactions performed through electronic means of payment and the relations between the participants to these transactions are regulated by the National Bank of Romania Regulation no.4/2002.

The electronic means of payment are both a card or another means of payment with access from a distance and means of payment type e-money.

### **1. Entities involved in the performing of transactions with electronic means of payment**

The following entities are involved in transactions with electronic means of payment:

- ***the holder***, the resident or non-resident natural or legal person, who, according to the contract concluded with the issuer of the means of payment, holds a payment instrument issued on his or her name or, in the case of the means of payment with access at a distance, others than the cards, holds a user name/password/code or any other similar element to allow the issuer its identification;
- ***accepting bank***, which is a bank offering to the traders services of acceptance on payment of the cards and/or the means of payment type electronic money (e-money), on the basis of a contract

previously concluded between the bank and the trader, as well as the services of issuing of cash on the bank's desks and in its own automatic teller machine network;

- ***accepting trader***, who is the legal person performing commerce acts and facts and who accepts the card and/or means of payment of e-money type as means of payment for the goods sold and the services performed, on the basis of a contract previously concluded with an accepting bank;
- ***issuer***, who is a bank authorized by the National Bank of Romania to issue electronic means of payment and who puts at the holder's disposal an electronic means of payment, on the basis of a contract concluded with him.

## **2. Operations that may be performed with the electronic means of payment**

The electronic means of payment is the instrument allowing to the holder to perform operations like:

- a) cash withdrawal, respectively the loading and unloading of the value units in the case of a e-money means of payment, from terminals like cash dispensers and Automated Teller Machine (ATM), from the offices of the issuer/accepting bank or from the headquarter of an institution obliged by contract to accept the electronic means of payment;
- b) payment of the goods or of the services acquired from the accepting traders and the payment of obligations to the public administration authorities, representing taxes, fines, penalties, etc., through imprinters, POS terminals or other electronic media.
- c) Funds transfer between accounts, others than those ordered and executed by financial institutions, performed through the electronic means of payment.

## **3. Issuing of electronic means of payment**

The person interested in becoming holder of an electronic means of payment shall address the issuer with a written application for this purpose. On the basis of the application approved by the issuer, he shall conclude and sign a contract with the holder. After the conclusion of the contract the issuer's authorized representative shall issue to the holder a personalized card with the special envelope containing the PIN code or the code allowing

for the identification of the holder/user and the access to the account of the card holder.

#### **4. Discounting of the operations performed with electronic means of payment on the Romanian territory**

The discounting of the operations performed with cards on the Romanian territory, regardless of the currency in which they are issued / denominated, shall be made exclusively in the national currency, according to the provisions of the currency regulations in force.

The payments made through the electronic means of payment are, in principle, irreversible; a payment instruction correctly initiated by the holder/user through a card or another electronic means of payment and authorized by the issuer or by the person indicated by it is irrevocable and can only be cancelled under certain strictly determined situations.

#### **5. Sanctioning regime**

Law no. 365/2002 on electronic commerce sanctions as offences:

- forgery of the electronic means of payment;
- possession of equipments for the forgery of the electronic means of payment;
- misrepresentation for the issuing or using of the electronic means of payment;
- performing of financial operations in a fraudulent manner;
- acceptance of financial operations fraudulently performed;
- performing of unauthorized operations in an information system.

## ***II. Payment order***

The payment order is regulated by the Regulation no. 8/1994, as further amended and completed. The payment order is an unconditional order given by the issuer to a credit institution to put at a beneficiary's disposal an amount of money. To put at a beneficiary's disposal, on the basis of a payment order, of a certain amount of money means to pay or cause to be paid to him the specified amount of money.

#### **1. Entities involved in the performing of transactions with payment orders:**

- ***Issuer*** – the person issuing a payment order on his own account;
- ***Payer*** – the first person issuing, on his own name and on his own behalf, payment order within a credit-transfer. The payer may be: a

- client of the initiating credit institution or the initiating credit institution.
- **Beneficiary** – the persons designated by payment order to receive a certain amount of money. The beneficiary may be: a client of the receiving credit institution or the receiving credit institution.
  - **Initiating credit institution** – the first credit institution issuing a payment order within a transfer – credit. A credit institution may be:
    - a) a bank, Romanian legal person, as well as a subsidiary from Romania of certain banks, foreign legal persons authorized by the National Bank of Romania;
    - b) a credit cooperative authorized by the National Bank of Romania;
    - c) a central house of the credit cooperatives authorized by the National Bank of Romania.
  - **Recipient credit institution** – credit institution that receipts and accepts a payment order, in its name or in order to put at the beneficiary's disposal a certain amount of money, within a transfer – credit.
  - **Issuing credit institution** – any credit institution, except the recipient banking unit, issuing a payment order, including the initiating credit institution.
  - **Receiving credit institution** – is the credit institution receiving a payment order for its execution, including the recipient credit institution.
  - **Intermediary credit institution** – is any issuing or receiving credit institution, other than the initiating or recipient credit institution.

### **III. Bill of exchange**

The bill of exchange is a document through which a person, the drawer or the issuer, gives order to another person, the drawee, to pay at maturity, an amount of money to a third person, the payee, or upon his order.

The bill of exchange has to take the form in writing and the document to comprise mandatory the mentions stipulated in Art.1 of the Law no. 58/1934.

The bill of exchange may be used instead of banknotes for the termination of a payment obligation in cash, being easily transferred by endorsement. By endorsement, the owner of the bill of exchange gives order to the drawee to pay the amount mentioned in the writ to the person in favor

of whom the bill of exchange has been transferred. The endorsement may be made even in the favor of the drawee, whether he has accepted or not, of the drawer or of any other obligee. The endorsement has to be unconditional. Any condition, to which it would be subjected, is considered as not written. The partial endorsement is null. The “bearer” endorsement is the equivalent of a blank endorsement.

In order to produce the expected effects, the bill of exchange has to be issued with the observance of the following conditions:

- capacity of trader;
- written form;
- presence of all the mandatory mentions.

#### ***IV. Promissory note***

The promissory note is a document through which the issuer undertakes to pay to the payee, or upon his order, an amount of money, at maturity, in a certain place.

Consequently, the promissory note intervenes between two persons, and not three, as is the case of the bill of exchange. Unlike the bill of exchange, it does not contain the payment order addressed to another person, but only the acknowledgment of his own payment obligation.

The promissory note has to be in writing and to comprise the mentions stipulated by the Art.104 from the Law no. 58/1934, as further amended and completed.

Failing the maturity, the promissory note is payable “at sight” and has to be presented at sight to the issuer within the legal term of one year.

The place of issue is considered the place of payment if the latter mention is missing. If the place of issue has not been written, it is considered to be the one stipulated next to the issuer’s name.

#### ***V. Cheque***

The cheque is a document through which a person, the drawer gives an unconditional order to a bank to which he has available funds, the drawee, to pay, upon the presenting of the writ, an amount of money to another person, the payee. The payee can be the drawer himself (cheque of withdrawal).

The cheque has to comprise the elements stipulated by law.

The cheque can only be drawn on a banking company. However, the check drawn and payable abroad is valid as cheque, even if the drawee is not a banking company.

The check can only be issued if the drawer has available funds with the drawee, on which he has the right to decide through cheque on the basis of an express or tacit understanding. However, the writ issued without the observance of these conditions is valid as cheque.

## ***VI. Operations with payments in cash***

Operations with payment in cash in national currency take place according to the provisions of the Regulations no.2/1996.

### **1. Performing of operations in cash by the legal persons**

According to the provisions of Art.7 from the Government Ordinance no.15/1996 banking, insurance and financial companies cannot issue to legal persons amounts in cash exceeding the ceilings paid to legal person, within the limit of a daily maximum ceiling of lei 30,000,000.

The following operations are exceptions:

- deposits in the accounts of the legal persons, opened with the banking companies that can also be made by other legal persons, without any ceiling;
- travel expenses on business, within the limit of the amounts due for the payment of the transportation, daily allowance, indemnity and accommodation during the travel, as well as of the unexpected costs, made for this purpose;
- protocol expenses for sessions, symposia and other such actions, subject to conditions of the scales established by the legal norms in force.

The law prohibits granting prince incentives to the clients, legal persons, making cash payments.

Payments and receipts operations between legal persons shall only be made through means of payments, without cash.

But, legal persons may make cash payments in the following cases:

- payment of the salaries and other personnel rights;

- other payments operations of legal persons with natural persons;
- payments to legal persons, within the limit of a maximum daily ceiling of lei 20,000,000.

## **2. Amounts in cash which are in the cashier's office of legal persons**

The amounts in cash which are in the cashier's office of legal persons cannot exceed at the end of each day the ceiling of lei 20,000,000. The exceeding of this ceiling is allowed only with the amounts due for the payment of the salaries and other personnel rights, as well as for other operations with natural persons, for a period of 3 working days from the date stipulated for their payment.

The amount in cash exceeding the established level shall be deposited in the banking accounts of the respective legal persons, as follows:

- in the next working day, if the headquarter of the legal person is in the same locality as the one of the unit of the banking company where the account is opened;
- in maximum 2 working days, if the headquarter of the legal person is in another locality than the one of the banking company where the account is opened;
- it is allowed for, in rare situations, the terms stipulated above to be exceeded, with the approval of the banking company where the legal person has opened its account.

These provisions must be also complied with by the economic subunits of the legal persons having an account in their own banking company and their own cashier's office.

## **3. Sanctioning regime**

Violation of obligations regarding the maximum ceiling of daily receipts is contravention and is sanctioned with a fine from lei 10,000,000 to lei 50,000,000.