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THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES

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THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES[1]

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Abstract:

The time limit can be: conventional, legal or jurisdictional. The condition as a means of the juridical act is a future event that is uncertain to be achieved, on which depends the existence (the birth or the abolition) of the civil subjective right and of the civil correlative obligation. For each contract there must be made an correlation between time limit and condition.

Keywords:

time limit, condition, contracts, law application.

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TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

I. Notion

I.1. The time limit

The time limit as a means of the juridical act can be defined as that future event that is certain in terms of achivement, until which is postponed the start of, or where appropriate, the extinction of exercising the civil subjective rights and the enforcement of the civil correlative obligations.

The new Civil Code defines the time limit as a means of the juridical act under article 141: "the obligation is affected by the time limit when its enforcement or settlement depends on a future event that is certain."

Legislative act

The obligation affected by the time limit designates, in a strict sense, either the obligation of the duty binding on the debtor, whose chargeability is postponed until the expiry of the time limit or the obligational legal relationship that expires along with the occurrence of the event (Fl. Baias E. Chelaru, R. Constantinovici, I. Macovei (2012) :1487).

The time limit can be classified according to several criteria:

- According to the criteria of being aware or not of its expiry, the time limit can be absolute or uncertain;
- The time limit is absolute when the moment of the future event occurrence has been precisely known since the beginning of the obligational legal relationship. The uncertain time limit is the one whose expiry is determined by a particular future event which is certain, but whose moment of occurrence is not exactly known beforehand (L., Pop. (2009) :151).
- According to its effect, the period can be: standstill period or prescription period.

The standstill period is the period that postpones, until its expiry, the beginning of exercising the civil subjective right and of enforcing the civil correlative obligation, consequently, the deadline for the obligation being postponed.

Until the expiry of the standstill period or until he/she is deprived of the benefit, the creditor can perform preservation acts and in accordance with the provisions of the new Civil Code, he/she can exercise the Paulian action.

As long as the standstill period has not expired, the creditor may proceed neither to enforcement proceedings nor to taking legal action against the debtor.

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

The prescription period is that time limit that postpones, until its expiry, the extinction of exercising the civil subjective right and of enforcing the correlative obligation.

- Related to its source, according to the new Civil Code, the time limit can be: conventional, legal or jurisdictional.

The conventional time limit, also called voluntary time limit is that deadline that has been established by an unilateral, bilateral or multilateral juridical act. In practice, most of the time limits are conventional.

Acccording to the way in which it was mentioned in the juridical act, the voluntary time limit can be express (when it is deliberately provided for by parties) or tacit (if it is implied from the nature of the concrete legal relationship or from other circumstances) (G., Boroi. L., Stănciulescu. (2012) : 132).

The jurisdictional time limit is that period of time allowed to the debtor in the cases provided for by law.

When the judicial body is a court, the name of judicial deadline is used. In practice, the most frequent judicial deadline is the grace period.

The grace period is that time period allowed by the court of first instance only in the debtor's favour, considering his/her financial situation, without necessarily having the creditor's consent and taking into account the possible stipulations in the juridical act. This time limit postpones the enforcement proceedings until its expiry or until the debtor is deprived of the benefit of the grace period, but it does not impede the compensation between the parties.

In accordance with the article 1415 (2) of the new Civil Code, the court will be able to set the time limit when the obligation involves, by its nature, a deadline and there is no agreement which should set it.

Moreover, when the parties agreed to postpone establishing the time limit or provided for this obligation to fall to one of them, when, after a reasonable period of time, the deadline has not been set, pursuant to the provisions of article 1415 (1) of the new Civil Code, the court will be able to set the time limit taking into account the nature of the obligation, the situation of the parties and any other circumstances.

The legal time limit is that deadline determined by a normative act and which is rightly a part of the juridical act. In the case in which the legal time limit is determined by provisions of mandatory law, it can be modified or removed by the agreement of the parties.

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

- Depending on the person benefiting from this time limit, it can be: in the debtor's favour, in the creditor's favour, in the favour of both parties.

As a rule, the benefit of the time limit is to the debtor's advantage, thus the solution previously found in article 1024 of the Civil Code being reiterated as a legal presumption (A., Răţoi. (2012) :526).

However, the time limit can also be determined to the creditor's advantage, for example in the case of the storage contract for which the deadline is usually determined in favour of the depositor, who acts as the creditor.

The time limit ca be set both in favour of the debtor and of the creditor, for example in the case of the insurance contract.

The debtor or the creditor, as the sole beneficiaries of the time limit that affects the obligational legal relationship, can waive it any time, without the agreement of the other subject involved in the obligational legal relationship.

Waiving the standstill period determined in the favour of the debtor implies an advance payment on his part which should not usually be fractionated (A. Răţoi (2012) :526).

I.2. The condition

The condition as a means of the juridical act is a future event that is uncertain to be achieved, on which depends the existence (the birth or the abolition) of the civil subjective right and of the civil correlative obligation(G., Boroi. L., Stănciulescu. (2012) : 135).

The article 1399 of the new Civil Code has as its correspondent the regulation hypothesis previously found in article 1004 of the Civil Code.

The conditional obligation, in a stricto sensu meaning, is affected by condition and is correlated to a conditional right (M.C. Costin, C.M. Costin (2007) :680).

The condition is related to uncertainty. It generally has a voluntary origin and aims at a future event that is achieved randomly (Ph. Malaurie at L., Pop. (2009) :733).

The condition offers to the subjects involved in the legal relationship the possibility to anticipate the future event which they hope to be fulfilled or not, without having any certainty in this respect (I. Turcu (2011) :523).

It is necessary to differentiate between the conditions of validity of the juridical act (listed in the article 1179 of the new Civil Code) or of the

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birth of some juridical situations (for example, the conditions of the maintenance obligation – article 524-528 of the new Civil Code) and the condition as a means of fulfilling the obligations. The condition – a means of fulfilling the obligations – involves meeting the following elements that characterize the event to which the text reports the notion as being genus proximus:

– the event should be in the future; as we have shown (see above, article 1397(2) of the new Civil Code), an event that has already occurred at the moment when the debtor bound himself/herself, cannot be the foundation for the manifestation of a condition, even if the subjects involved in the obligational relationship have not gone through that event;

- the achievement of the event should be uncertain; the uncertainty should concern the achievement itself of the event, not the moment when it occurs (L., Pop. (2009) :132).

The condition can be classified according to several criteria:

1. According to the effect it takes, the condition can be suspensive or resolutory;

The suspensive condition is the one on the fulfilment of which dedends the efficiency of the civil subjective rights and of the correlative obligations. For example, "I sell my car to you if I get a promotion".

The resolutory condition is the one whose fulfilment depends on the efficiency of the civil subjective rights and of the correlative obligations. For example, "I sell my skis to you but, if it snows in the next 30 days, the sale will be ended".

Unlike the suspensive condition involving the occurrence of a specific legal relationship, distinct (as regards the content and the object) from the legal relationship which occurs if the condition is fulfilled hypothetically, the resolutory condition has as its premise the existence of a legal relationship as such, constituted in a valid way.

There is also the obligation (duty) itself which occurs as such, including by enforcement, and which is incumbent on the passive subject of that legal relationship. Until the possible fulfilment of a condition, the obligation is simple.

2. In connection with the will of the parties, the achievement or non-achievement of the event, the condition can be: casual, mixed or protestative.

The condition is casual (casus-chance) when the achievement of the event depends on hazard, chance, being independent of the will of the parties (G., Boroi. L., Stănciulescu. (2012) : 136). For example, "I sell my books to you if it rains outside".

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

The new Civil Code offers an example of casual and resolutory condition in the matter of donation, thus, in accordance with the article 1016, "the contract can provide for the return of the donated goods, either for the case in which the donee would precede the donor or for the case in which both the donee and his/her descendants would precede the donor".

The condition is mixed when the achievement of the event depends both on the will of one of the parties and on the will of the determined person. For example, "I bound myself to sell my car to you if, until the end of the year, you will get engaged to X".

The condition is protestative when the achievement of the event depends on the will of one of the parties. The protestative condition can be in its turn: purely protestative or simply protestative condition.

The purely protestative condition is that condition whose fulfillment depends exclusively on the will of one of the parties. For example, "I will rent my car to you if you wish so".

The obligation assumed by the debtor under the purely protestative suspensive condition does not take any effect, being absolutely void because the debtor's intention to bind himself/herself is missing.

Conversely, the obligation assumed by the creditor under the purely protestative (suspensive or resolutory) condition is valid. This conclusion can be drawn from the per a contrario interpretation of the article 1403 from the new Civil Code.

The obligation assumed by the debtor under the purely protestative resolutory condition is valid because the debtor has the intention to bind himself/herself, but he/she reserves the faculty to put an end to this obligation.

The simply protestative condition is that condition whose fulfillment depends both on the will of one of the parties and on an element exterior to it, such as an exterior fact or the will of an undetermined person (G., Boroi. L., Stănciulescu. (2012) : 137).

3. According to whether it consists in the achievement or non-achievement of the event, the condition can be positive or negative.

The positive condition is the one which affects the existence of the civil subjective rights and of the correlative obligations by means of an event that is about to be achieved, more exactly if the condition is stated in an affirmative sense.

On the other hand, the negative condition consists in an event which is not to occur, more exactly when the condition is stated in a negative sense.

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

4. The condition can also be classified into: possible and impossible condition as well as licit and illicit condition;

The condition must be possible; the possibility of the occurence of the future event is analyzed both from the material and the juridical perspective.

From the material perspective, the impossibility is not necessarily absolute. It is manifested even if the situation it expresses could be overcome by using some extraordinary means. The impediment has the same relativity as the force majeure (Ph. Malaurie at L., Pop. (2009) :741-742).

The juridical impossibility is estimated at the moment of establishing the condition and in the situation in which, during its occurrence, the impossibility disappears (as a consequence of the normative evolutions), the condition will still be considered as impossible (L., Pop. (2009) :133).

The impossibility of the condition can be expressed affirmatively or negatively. The affirmatively impossible condition is the one concerning the fulfillment of a circumstance that cannot occur. The negatively impossible condition is the one that consists in the absence of the achievement of a thing that will never be fulfilled (I. Turcu (2011) :530).

The condition to not do an impossible thing does not affect the validity of the obligation contracted under the suspensive or resolutory condition (I. Turcu (2011) :530).

The requirement that the future and uncertain event should be possible is relevant only in the case of the suspensive condition: only the impossible suspensive condition is prohibited because the obligation as such will never exist (Ph. Malaurie at L., Pop. (2009) :503).In the case of an impossible resolutory condition, the obligation is simple.

The condition has to be licit and moral. The licit character and the conformity with the rules of social coexistence which concern the public order aim mainly at the intention of the subjects involved in the legal relationship and not at the nature itself of the event which the condition has as its object (Ph. Malaurie at L., Pop. (2009) :742).

If it does not indicate the personal conduct of the subjects involved in the conditional legal relationship, the future and possible event – as such, in its own form of manifestation – can have an illicit and/or immoral character.

Unlike the previous solution which included exclusively the sanction of invalidity (article 1008 of the Civil Code), article 1402 (2) of the new Civil Code introduces alternatively two sanctions which can function in the case

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

of the occurrence of a condition that does not obey the validity conditions. Both hypotheses come under the premise of the manifestation of the condition within the conventional framework.

If the parties contracted the obligation taking into consideration the condition (this condition configuring the cause of the contract amd being its essence), its impossible, illicit or immoral character entails the absolute invalidity of the juridical act. Thus, the civil sanction will consist in considering as unwritten the clause by means of which the condition was stipulated. The obligation arisen from the juridical act thus becomes a simple one.

II. The delimitation of the term of condition. Theoretical issues

In the case of an obligation affected by a time limit, the event is certain to be achieved in terms of fulfillment, on the contrary, in the case of the condition, the event is uncertain to be achieved in terms of its fulfillment. Even if we dealt with an uncertain deadline, not only is the moment of the event achievement known, its achievement being certain, on the other hand, in the case of the condition, the achievement of the event is not called into question.

The time limit as a means of the juridical act affects only the eforcement of the juridical act while the condition affects the existence itself of the civil subjective rights and of the correlative obligations.

In the absence of a contrary stipulation, the condition takes effect ex tunc (for the past), on the contrary, the time limit takes effect ex nunc (for the future).

In the matter of the transferring acts of property, the time limit does not postpone, in principle[4], the transfer of the property right, however, the condition posptones the transfer of the property right.

The debtor that contracted an obligation affected by a time limit can make a payment that is valid before the expiry of the standstill period and he/she can request the return only if his/her consent was vitiated by intentional fault or violence. In the case in which the court grants a grace

[4] Given that there are norms of soft law, the parties can agree to postpone the transfer of the property right. For example, in the case of the sales contract, providing for the payment of the price in installments and the reserve of the property right, provided by articles 1755-1757 of the new Civil Code, the buyer acquires the property right when paying the last installment of the price.

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

period to the debtor, he/she can put forward the compensation as a means of settling the creditor's obligations.

Conversely, if the debtor's obligation is affected by a suspensive condition, the payment made before the fulfilment of the condition is not valid, representing an undue payment. Even more so, before the fulfilment of the suspensive condition, the debtor cannot put forward the compensation to the creditor because the obligation cannot be settled in a valid way by means of payment.

Another difference between condition and period can be seized in the field of conservative measures that can be taken by the creditor. Thus, in the case of an obligation affected by a standstill period, the creditor can bring revocatory action (Paulian action) because the new Civil Code provides for the existence of a debt as a condition for enforcing the action – this fact representing a novelty brought by the new Civil Code, which detaches from the unanimous opinion of the doctrine which maintained that the revocatory action can be admissible only in the case of an uncontested and enforceable debt.

On the other hand, in the case of an obligation affected by a suspensive condition, the creditor cannot bring a revocatory action in the light of the fact that this debt is not uncontested, the action will thus be dismissed as premature.

III. The delimitation of the term of condition, as means of the juridical act. Practical issues

In the judicial practice, the contract terms presented below were interpreted in a different way, some statements considering that the obligation would be affected by a suspensive condition, other statements considering that the obligation would be affected by a standstill period.

"Article 2 – the price of the license, Means and pay dates

2.1. The total price of the licence is 20,000 lei. The price will paid in several instalments as described below:

1) a first instalment of 8,000 lei; and

2) the rest of 12,000 lei being paid in six monthly instalments of 500 lei and 68 equal monthly instalments of 100 lei/month.

2.2. The first instalment of 8,000 lei will be paid until 1 February 2010

The first instalment of price from the ones set in accordance with article 2 (1)(b) is due and will be paid within 30 days from the date of the

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

realization of net revenues resulted from selling the products obtained from the exploitation and utilization of the invention. The parties agreed on the fact that all the price instalments that were established, with the exception of those provided by article 2 (1)(a), will be paid by the licensee only under the condition of realizing net revenues from selling the products obtained from the exploitation and utilization of the invention".

The following are to be analysed from the juridical point of view:

1. If the theses II and III of the article 2 (2) stipulate a time period or a condition.

In other words, if the event consisting in realizing net revenues from selling the products obtained from the exploitation and utilization of the invention represents a time period or a condition that affects the obligation to pay the rest of the price, provided for by article 2(1)(b) in the contract.

III.1. The interpretation of contract terms

The interpretation of conventions – article 977 of the Civil Code of 1864 - *"The interpretation of contracts is made according to the common intention of the contracting parties and not according to the literal meaning of the terms"*. Thus, the expression used in article 2(2) in the contract "*only under the condition of realizing revenues...*" must be interpreted in the sense which the parties took into consideration at the moment of concluding the contract and not in the literal sense.

Consequently, the stipulation of the word "condition" by the parties must not be interpreted in a strict way as a means of the juridical act, but in the sense aimed at by the parties at the moment of concluding the agreement.

The time limit is a future event that is certain, mentioned in a juridical act with a view to delaying the enforcement of the obligation or putting an end to the effects produced by that act.

The time period can be classified according to several criteria:

a) Acording to the effect it takes: standstill period and prescription period.

The standstill period – postpones the maturity date of the obligation until the moment of its expiry.

The prescription period – the obligation is settled at the moment of its expiry.

According to the knowledge on the end of the time limit: absolute and uncertain time limit.

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

b) According to the knowledge on its expiry: absolute and uncertain time limit.

The absolute time limit – is the time limit whose exact expiry moment is known beforehand. The absolute time limits are the ones established at a certain calendar date, at the expiration of an exact number of years, days or hours as well as the ones linked to an astronomical moment that can be precisely foreseen.

The uncertain time limit – the time limit whose end date is not precisely known at the moment of concluding the juridical act although its expiry date is certain.

The time limit is to the debtor's advantage with the exception of the case in which it results from the law, the will of the parties or circumstances that it was stipulated in favour of the creditor or of both parties.

Article 1025 of the Civil Code of 1864 – "*the debtor cannot claim the benefit of the time limit anymore when he/she is in insolvency or when, by his/her deed, reduced the securities that were offered by contract to his/her creditor*".

The legal literature as well as the judicial practice ruled unanimously that, by the expression *the debtor cannot claim the benefit of the time limit anymore when he/she is in insolvency*, it is understood that the debtor is deprived of the benefit of the time limit if he/she is unable to pay or, where appropriate, is in insolvency declared under the conditions laid down by law. This interpretation was also embraced by the legislator, thus, the article 1413 of the new Civil Code provides that the debtor is deprived of the benefit of the time limit if he/she is unable to pay or, where appropriate, is in insolvency declared under the conditions laid down by law as well as when, by intention or gross negligence, by his/her deed, he/she reduces the securities lodged in favour of the creditor or does not constitute the lodged securities.

The condition is a means of the obligation, consisting in a future and uncertain event which suspends or solves retroactively the existence of a right or of the correlative obligation.

From the point of view of the achievement possibilities, the condition can be: suspensive, resolutory, impossible, illicit or immoral, purely protestative.

The condition is considered as fulfilled according to the criteria set by the parties or which they must have envisaged according to circumstances.

The suspensive condition affects the efficiency of the juridical act, namely the effect which that act takes. Therefore, in the case of acts

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

transferring property rights, the transfer of the property right is postponed until the condition is fulfilled.

The object of the present contract is represented by the transfer of the exclusive rights of exploitation and utilization of the invention on the territory of Romania in exchange for the price of 20,000 lei.

Consequently, the ***licensor*** bounds himself/herself to transfer the exploitation and utilization right while the ***licensee*** bounds himself/herself to pay the price.

Given that the price is determined (20,000 lei), at the moment of concluding the contract, the parties considered it as a future event that is certain to be achieved. Thus, the parties decided by agreement that the price of 20,000 lei should be paid as follows: a first instalment of 8,000 lei and the rest of 12,000 lei is to be paid in six monthly instalments of 5,000 lei each and 68 monthly instalments of 100 lei each.

As it is more known the fact that any exploitation is preceded by a geological survey and a feasibility study, so that the ore quantities to be extracted may be known, we can draw the conclusion that, even since the moment of signing the contract, the licensee has been acquianted with the quantity and costs incurred by the exploitation of mineral resources.

The ore considered at the moment of concluding the agreement can be used in several industrial branches. Given the fact that this ore can be used for several purposes, it has a reference price both on the national and international markets. It is also well known the fact that the reference prices of ores vary slightly.

Thus, the licensee has foreseen or has had to foresee, even since the moment of concluding the agreement, the profit that will result from exploiting this ore.

We can draw the conclusion that, at the moment of signing the license contract, the profit was for the licensee a future event, certain in terms of achievement, but this profit depends solely on the licensee's will in the sense that he/she has to put into effect the patent in order to get profit.

Therefore, we can indicate that the parties took into consideration that the agreement should be affected by a time limit as a means of the juridical act.

If we considered that the parties envisaged a condition as a means of the juridical act, the first instalment would represent an undue payment because what is paid until the fulfilment of the condition is subject to return.

TOADER, A. I., POROF, A. (2014). THE DELIMITATION OF THE TIME LIMIT AND OF THE CONDITION AS MEANS OF THE JURIDICAL ACT. PRACTICAL ISSUES. Jurnalul de Studii Juridice, Year IX, No. 3-4, December 2014, pp. 141-154.

Furthermore, if the parties had wanted to conclude the contract under the condition, they would not have mentioned exactly the total price because the condition is a future event, uncertain in terms of achievement.

The article 1010 of the Civil Code of 1864 provides that: "The obligation is invalid when it was contracted under protestative condition on the part of the one who binds himself/herself". By the purely protestative condition, we understand the fact that the fulfilment of the condition depends solely on the will of one party.

In the case of the analysed contract, the profit depends solely on the licensee's will to put into effect and exploit the patent.

Therefore, if we considered that this contract was affected by a condition, we would deal with the purely protestative condition on the debtor's part, but such an obligation on the debtor's part is prohibited by article 1010 of the Civil Code of 1864.

Article 978 of the Civil Code of 1864 – *"When a clause receives two meanings, it is interpreted in the sense that it can take effect, not in the sense that it can have no effect"*.

From what has been previously stated above, we think that the expression "that all the installments of price established..., will be paid by the licensee only under the condition of realizing net revenues" has to be interpreted in the sense that the licensee benefits from a standstill period, by means of which the payment of the difference of price will be postponed until the ore and consequently, the related profit are exploited.

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