

# **Investigating the limits of civil liability of drawee bank for the issuer and the holder of the check**

## **Abstract**

As regards everyone is rationally responsible for his actions and behaviors and it also accepted by the law as a certain legal principle, so organizations and legal entities would not be an exception to this principle. Banks also have continuous interaction with natural and legal persons and if the banks cause losses or damages to the parties, they have civil liability for and shall compensate them for their damages. When interacting with customers, banks issue circular letters and internal regulations, may be in some cases these regulations lead to customers' losses, which also banks as legal entities will be responsible for them. The present paper investigates and studies the limits of civil liability of drawee bank for the issuer and the holder of the check by a document-library method. The result is that the bank has some responsibilities for issuer to verify the check holder's identity, verify check validity, match the issuer's signature, issue payment order, payment countermanded, and so on. Also, for holder, the bank is required to pay the check, issue payment countermanded, observe deadlines, and so on. The present study investigates and studies in this field by a library method.

Keyword:

Bank, Check, Civil Liability, Drawee Bank, Check Issuer, Check Holder.

## **Introduction**

Since the use of a check document is very common nowadays in community financial transactions and many checks are handled by people every day, numerous check-related cases filed daily in the registry and judicial authorities. However, people who use the check may have problems due to the lack of knowledge of check rules. Because of the importance of checks in economic transactions of people in the society, the legislature has made laws to protect the rights of those who deal with checks in some way. The holder or holders of the check are also supported by legislature who must have the conditions and assignments to qualify for legal benefits. Given that the bank acts as place of payment in the field of issued checks by current account owners, the banks have also civil liability for their customers, including the holder (The person who receives the check after issued) and also the issuer of the check (the current account owner who issues the check for a specified amount). Civil liability refers to losses incurred by someone outside the contract between the parties. A quick look at the legal texts and accuracy at trading partners' methods clearly illustrates this issue, as the jurisprudential sources and the religious injunctions are replete with many different commands in this field. Therefore, civil liability is a rational principle, a religious law, and a legal rule that guarantees the potential damages and losses caused by individuals' default or fault in transactions and harmful acts occurred out of contract. The main question is now what the responsibility of the bank is on the market checks provided by banks for people

with current accounts? How much is the bank's liability? And so on. So in this article we try to find a reasonable answer to the ambiguities.

## **1. Check definition**

Check means an inscription by which people got some money deposited in a bank or transferred it to another person (Moein, 1983, 1299). Some have also used check as a deed, plea, charter, treaty and bill (Amid, 1978, 405). Check is one of the achievements of banking, and the earliest evidence of check and banking goes back to the Achaemenid period. Article 310 of the Commercial Code of Iran, adopted in 1932, defines the check as "a check is an inscription whereby the issuer returns or transfers his funds to another which he has with drawee as a whole or in part." Subsequent laws passed in 1933, 1952, 1958, 1965, 1976, 1993 and the law approved in 24/08/2003 2003 the legislator did not define a check but the definition derived from the provisions of these laws is slightly different from the definition in Article 310 of the Commercial Code. "Since: First of all: in the laws of 1952-1993 the check was explicitly recognized as an enforceable document. Secondly, the concept of check is limited to a written order to pay or refund money to a legal bank, not any natural or legal person that the check was issued to him as a drawee. Third: Regardless of the legal and credit aspect of the check, this document must have a form approved by the authorities in accordance with the banking Banking regulations and customs (Jalilvand, 2009, 9).

Article 172 of the proposed bill of Commercial Code states that "a check is a document by which the issuer receives or transfers money from his bank account." But check for legal doctrine "is a particular sheet that one bank has given to the owner or owners of the account for refunding or usable credit or transferring it to another" (Guldouzian, 2009, 175). It is also said that "a check is a document whereby the issuer orders drawee bank to return or pay his funds or usable credit in that bank to the drawer as a whole or in part" (Mir Mohammad Sadeghi, 2013, 332). Accordingly, a check is a document for the payment of a specified amount that is in the issuer's account and drawn on a bank to be paid in cash or payable to order (with the right to transfer to a non-holder or bearer). In the author's view, a check is in fact a document whereby the issuer orders a bank where he has deposit or credit to pay a specified amount according fixed maturity date to the holder.

## **2. limitations of drawee bank's liability for the check holder**

If the holder runs into the bank, after checking the accuracy of the information contained in the check sheet, as well as matching the issuer's signature with the bank's signature sample and checking time of payment of the check, the bank will be required to pay the holder the amount stated in the check. In case of lack of funds at the issuer's account, upon the request of the check holder, whether natural or legal persons or the bearer of the check, bank is required to issue a of non-payment certificate to the check holder for legal follow-up.

### **2-1-Check payment**

According to the provisions of Article 264 of the Civil Code, which also applies to business regulations, one of the ways of termination of obligations is to fulfill the obligation, so after

paying the check by the bank (drawee) to the holder, the drawee's debt to the issuer or his legal proxy (endorser) is abolished. Delivery of check by issuer to the creditor (holder) is only denoting the debt of issuer from drawee, so remission will be realized when the check is paid to the creditor. Accordingly, the legislature has resolved that in the event of non-payment by the bank, the holder has the right to refer to the issuer and endorsers of the document severally, jointly and solidarity. In order to the holder can enjoy the benefits of this type of document, he must request a check security according to circumstance of 15 and 45 days or four months prescribed in the Articles 315 and 317 of the Commercial Code, otherwise he can't refer to endorsers and guarantors as well as the issuer, if he has delivered the check security to drawee). The check security should be paid as soon as it is presented (Article 313 of the Commercial Code), but if the check issued with a promise to pay, as we know the promise in the document does not remove it from the check. If the check date is after its issuance and the bearer present the check before the date indicated, the aforementioned deadlines will start from the presentation date and if it will be presented after the date mentioned, the aforementioned deadlines will be accounted in the check.

## 2-2- Drawee bank and dud check

A check is called dud check when there isn't any check security in drawee bank or the bank refuses to pay it for some reason. In fact, instead of talking about a false check or an dud check, one should speak of an "unpayable check" (Skinney, 2000, 6). According to commercial Code, Drawee may be a bank, public and private institutions, or an ordinary person. However, only checks counted to enforceable documents are subject to criminal prosecution if they are free of charge, Issued under Articles 1 and 6 of the Law on Issuance of Check dated 19 August 1967 is a responsibility of authorized banks of the country. Therefore, if a check is taken by charged a person other than authorized banks and the drawee refuses to pay it for any reason, the holder shall only comply with the provisions of Article 315 of the Commercial Code and formalities to protest he can give his right by filing a petition and going to the competent courts.

## 2-3- Issuing a Certificate of Non-payment by drawee Bank

The drawee bank issues a certificate of non-payment if the check holder come to the bank for receiving the agreed check amount due in the following circumstances. The bank is required to issue a certificate of non-payment for the checks that are returned. In the non-payment certificate, the reason for the non-payment of the check and the issuer's address shall be determined according to the address of the bank and the matching or mismatching of the issuer's signature with the copy of the signature presented to the bank shall be verified and submitted to the holder and The third copy of this sheet must be sent to the account owner whenever the fund is less than the check, bank at the request of the check holder should pay the check amount to the holder and the check holder with the amount received behind the check and submit it to the bank receives a certificate of containing the check details and the amount not paid from the bank. Includes a check from the bank and an amount not paid to the holder by the bank . The check is considered dud check for the amount not paid and the bank's certificate in this case will be a substitution for the original check to the holder.

1. The contents of the check shall not be inserted in accordance with the prevailing law.
2. It has cancellation and for verification of the value in the cancellation, on the back of the check-sheet no explanation has been given by the issuer.
3. Customer has no fund and credit.
4. Blocking of current account funds by judicial and other competent authorities.
5. Notify the account owner, check interested or other authorities of based on missing, fraud, invention, theft for specific checks or the whole of customer's check book.
6. Mismatching of the issuer's signature with the sample in the bank.

Period of submission of a check to drawee Bank and Liability of endorsers as there is no limitation in issuance act and Commercial Code for Period of submission of a check and demanding the payment of the check and the Articles 318 and 319 of the Commercial Code described the apse of time that it isn't related to the bank's action of paying the check, so the check interested can go to the bank, according to the Banking Law Commission in 1984, and collecting the check for a period of ten years. Therefore, the holder has the right to go to the bank from the date of maturity until any time during ten years to receive the check.

#### **2-4-The possibility of blocking the account by drawee bank**

In Iranian law, banks can only block issuer's account according to the law and In the area of judicial orders.

1. According to Article 21 of the issuance act of 1993: "Banks are obligated to close the current accounts of individuals who have issued non-sufficed fund check more than once and the prosecution of whom has resulted in issuance of bill indictment, and not open current accounts for them for three years. "This part of Article 21 is in fact the same as provided in Article 20 of the check act of 1976, with a slight difference: the period of deprivation of the issuer of dud check is immediately reduced from five years to three years. On the other hand, that part of the former Article 20, which foreseen, In the event of an issuer's guiltlessness by the court after that the indictment has been issued, the public prosecutor's office must inform the central bank by the defendant's request so that the Central Bank circularize that opening the current account is permissible to other banks is removed from Article 21 itself and incorporate in Article 5 of the regulation, that the reason is unknown.
2. The Central Bank of the Islamic Republic of Iran is obligated to maintain an orderly and organized record of those who have issued non-sufficient fund checks and in execution of this act supply all banks of the nation with a list of their names. These provisions, as provided in Note 1 to Article 21 of the dud check Act, adopted in 1993, are reproduced in Article 3 of regulatory guide on the Opening Current Account, with the brief explanation that "the list must be prepared at the end of each month and according to the circular served to the other banks of the country. "

#### **2-5- advising the holder about completing the fund**

Lack or shortage of covering is the most common criminal offense for checks in our country. According to Article 3 of Issuance of Corrective Check 2003, it does not matter

whether the issuer has no funds in the bank or that the amount in the account is less than the amount of the check to accomplish this crime. It should be noted that according to Article 5 of the aforementioned law, if the holder requests the check, the bank is obliged to pay the amount in the account to the holder by receipt of the check, and issue a certificate containing the specification of the check and the amount received from the bank. This check is dud check to the amount not paid and the bank's certificate is a substitution for the original check. (Shambayati, 2014, 298)

### **3. Limitations of drawee bank's Liability for the check issuer**

The issuer issued the check from his current account credit. Therefore, the bank is more liable to the issuer of the check, which is actually one of the customers of the drawee bank, and issued the check regard to the account and his credit in drawee bank. First of all, the bank must ensure the accuracy of the information contained in the issued check and also to ensure that the check issued by the issuer must match the signature on the check sheet with the sample signed in the bank and in cases that the amount of the check indicates a high value the bank shall contact the Account Holder and after confirmation of the Account Holder, shall pay the check amount to the Holder. And it has to payment.

#### **3-1- investigating the account credit**

The most important issue in paying a check is the place where it is drawn or credit of the holder or issuer for paying the check amount. The place where check is drawn according to Article 130 of the Commercial Code shall be available at the time of issuance or at the time of the claim. Accordingly, the following conditions should be considered for the place where it is drawn.

1. The place where the check is drawn that described the issuer' debt from drawee bank shall not be executory or conditional.
2. The balance of the place shall be equal to the amount of the check and may be payable. However, if the account balance is not equal to the amount of the check, then in this case whether the account balance is higher so it will be paid only to the account holder at the same amount as the check or there may be less balance which in this situation may it be paid to the check holder at the same amount as the check holder's request and the balance may be indicated in the check or the holder may be compensated the shortage. This means first completing the account balance in the amount of the check by liquidating the account deficit and then withdrawing the check.
3. The place where check is drawn, cash or certain credit is irrevocable.
4. Securities or business documents that drawee have brought by attorney from the issuer, or have discounted or accepted for sale, shall be the place of the check. But the papers that have not yet been paid or the drafts that have not been accepted by the drawee are not considered the place of check (Hosseini Tehrani, 1985, 114).

#### **3-2- Check payment order**

The check payment order shall be unconditional, otherwise according to the public information and regulations of Article 130 of the Commercial Code and explicitly the contents of the latter part of Article 2 of the Check Act, the Bank shall not apply to such condition if a condition is specified for payment and the payer is allowed to pay the check amount to drawer irrespective of the stated condition. Also, in accordance with the provisions of paragraph (a) of Article 21 of the Check Issuer Act of 2003 "whenever in the check text, its payment is subject to conditional realization" and also to paragraph "d" of the same Article "when it is proved unconditionally in the check text that the payment is subject to conditional fulfillment or a check to guarantee a transaction or a promise, check is not indictable. Also, paragraph 2 of Article 173 of the Commercial Code describes "unconditional order for payment of a certain amount in letters and numbers" of the formal and basic conditions of the check. Therefore, the check payment order given by the issuer to the bank should be properly reviewed by the bank and if it is unclear it should be returned to the issuer for revision. Otherwise, the bank and the payer will be liable for the possible damage caused by the negligence and failure.

### **3.3- identifying the check holder**

One of the responsibilities of the bank towards the issuer of the check is to verify the identity of the holder of the check who goes to the bank to receive the check. "The concept of identity simultaneously establishes two possible relationships between individuals or objects: on one hand, similarity and on the other, difference." (Jenkins,2002, 14). Definitions of "self" based on personal or individual traits are defined as personal identity. It is also another definition of self-categories that identifies the individual as a single person, based on their individual differences, distinct from other individuals within the group (Duran and Mohseni, 2007, 114) and is also applies as a reflective definition of self (Moein, 1983, 1299). But here it means checking the identity of the holder of the check, which indicates that the customer is in fact the person whom issued the check in his name and wants to receive it. For this reason, banks will check the identity of the holder after investigating check and completing the contents behind the check, otherwise the bank will be liable to the issuer.

### **3-4- Mismatching the check issuer's signature**

The payer bank is required , as usual, to mismatch the signature or stamp and its signature of the check to the sample of the signature or stamp and signature of the issuer. In the bill, the bank's obligation as provided in Article 172 is independently specified with one Article and the current check issuing act does not have that Article independently. It should also be noted that the question of matching or mismatching has been raised in Article 4 of the current check issuer act and Article 207 (paragraph 5) of bill about the Certificate of Non-Payment. Therefore, the obligor bank, after examining the identity papers of the holder of the check, will be required to verify the signature of the issuer. This means they compare the signature on the check sheet with that of the sample of the check issuer put into the bank when opening an account and obtaining a check, and only pay the check if the signature sample is matched. Otherwise, the bank and its staff will be responsible to the account holder.

### **3-5 - Issuing checks on behalf of the account holder**

Under Article 182 of the Commercial Code bill, if the check is issued on behalf of the account holder, whether natural or legal, the signer or signatories and the owner of the account shall be liable for non-payment unless:

1. The agent proves that he or she has signed within the limits of the law and authority to sign the check and that the non-payment is documented by the account owner or his / her next agent and signatory's position shall be cleared in the check text. In this case, only the account owner and the next agent will be jointly responsible.
2. The account holder shall prove that the check has been signed without authorization or excess of power and the trust to the signatory or signatories has joint and several liabilities. According to Article 19 of the current check issuance act the agent or lawyer of the account owner are the subject of criminal prosecution, but Article 182 does not provide for criminal prosecution, thus completing Article 182 is proposed in this regard. Explanation is that issuing a dud check is a crime and punishable in any case, no matter whether the account owner issued the dud check his agent and lawyer, or the account owner is a natural person or a legal person (Pirouz Far, 2000, 37).

### **Conclusion**

Check means a dated and valuable sheet that is commonly used for impulse purchases as a replacement for cash payments. The check owner signs the check after writing its value and the due date. On the due date, days of grace, the person who received the check goes to the bank and receives the specified amount from the issuer's current account.

1. The bank is responsible to both the holder of the check and to the issuer. Therefore, the bank is required to pay the check, issue a certificate of non-payment, declare to the holder to complete the balance in front of the check holder and is required to check the credit, payment order, non-payment order, identify the holder and the issuer's signature matching.
2. The legislator, in particular regarding the liability of banks for the act of issuing dud checks, has not provided any specific regulations, and only in Article 35 of the Monetary and Banking Act states a general rule that "each bank shall be liable for any damages caused to its customers as a result of its operations." This general rule is not very different from the general rules of civil liability, and is not an easy means of ascertaining the bank's error and sentencing it for compensating for dud check holders' damages provided by the bank's fault customers, even with assuming that the bank has made a mistake in selecting a customer. So that, in this particular case, the legislator should get a special interference to make the bank more careful in selecting the holders of checks by the fear of obligating the bank Complete compensation for holders of dud checks. The bank needs to play a more effective role after opening an account and delivering checkbooks to customers.

### **Resources**

1. Pirouzfard, Akbar, 2000, Bank Responsibility towards Current Account owners, Journal of Economics News, No. 88.
2. Jalilvand, Yahya, 2009, A Comparative Study of check Regulations in Iranian, French and German Law, Journal of the Bar Association, No. 206.
3. Jenkins, Richard, 2002, Social Identity, Toraj Yarahmadi, First Edition, Tehran, Shirazeh Publication
4. Hosseini Tehrani, Seyed Morteza, 1985, Check Act and its Regulations, Journal of Law «Legal and Judicial Studies», No. 3
5. Doran, Behzad and Mohseni, Manouchehr, 2007, Identity, Approaches and Theories "Identity and Identity Crisis", Second Edition, Tehran, Humanities, Culture and Social Studies Institute
6. Sarukhani, Bagher and Rafat Jah, Maryam, 2004, Sociological Factors Affecting the Redefinition of Women's Social Identity, Journal of Women's Research, Volume II, Number 1
7. Sakini, Rabia, 2000, Reflections on the Civil Aspects of Issuing a Dud Check, Journal of Judicial Law Views, No. 17 and 18
8. Shambayatt, Houshang, 2014, Specific Criminal Law (Offences Against Property), Tehran, Majd Publications
9. Amid, Hassan; 1979, Amid Culture, Tehran, Amir Kabir Publications
10. Guldouzian, Iraj, 2009, Specific Criminal Law, Tehran, Mizan Publications
11. Moein, Mohammad; 1983, Moein Farhang, Fifth Edition, Tehran, Amir Kabir Publications
12. Mir Mohammad Sadeghi, Hussein; 2013, Offences Against Property, Thirty-fifth Edition, Tehran, Mizan Publication.