

Form Conditions of Check Issuing in Iranian and British Law

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Abstract

The aim of this research is to evaluate the components and to state the form conditions of check issuing in statute of two countries of Iran and England. Due to the wide use of check and prevalence of its use as a payment instrument, and even the instrument for obtaining reputation such as promissory note and draft, the issuer should be familiar with the form conditions of check issuing to prevent possible problems caused by lack of knowledge. Since today these documents play a major role in communicating and business transactions, and strength most of deals. This led to prevalence of using aforementioned documents in establishment of trade exchanges, so that it can be said that these documents are an inseparable part of business transactions. The results obtained from the other researches and studies indicate that form conditions of check issuing are almost identical in Iranian and British Laws, that observing some of them is necessary, and if they are not observed, commercial document of the check will not have the necessary validity. Of mandatory form conditions include the date of issuing check include: Check issuing date, mentioning the word of check, unconditional order of payment of the amount check, check amount, mentioning the name of drawee on the check, mentioning the name of Mohil, indicating the place of check issuing, indicating the name of the holder, signature of check . In this study form conditions of issuing electronic check have also been investigated.

Keywords: form conditions, issuing check, electronic check

1. Introduction

If there is a branch of law that can utilize the comparative study more than other branches in a functional way, that branch is commercial law. In fact, if the criminal law, constitutional law, administrative law and other fields of domestic law can evolve in self-centered way - on the assumption that this would be beneficial to a country's domestic law -, commercial law neither can nor should be without the influence of foreign law. In fact, commercial law that is mainly law of tradespeople is influenced by the customs and habits that have been established gradually by tradespeople.

Whatever commercial law is close to each other, the conclusion of transactions between countries will be easier and their number will be more and speed of their implementation will be easier. Make transactions in a harmonious atmosphere and without stress definitely helped developing countries, and finally will be effective in the consolidation of peace between nations. It is not vain that in recent years the numbers of conventions that have been enacted and signed to codify the rules of commercial units have been added.

Iran's trade law that has been approved in 1932 is mainly derived from the French in 1807. But while the French Commercial Code in various fields (law firms, law on commercial documents, law on bankruptcy, etc.) have been greatly developed and changed. Our trade law since its adoption till now has had no remarkable evolution. This slowdown is partly due to the slow development that has been realized in commercial and economic structure of our country.

1.1 Form Conditions of Issuing Physical and Electronic Check¹

Issuance in term, means writing and completing paper in order for the sequence of its specific effects such as issuing birth certificates, issuance of duplicate, issuance of ownership sheets, issuance of marriage sheets, etc.,

¹ To learn electronic check See: Sardoe Nasab, Mohammed, e-commercial documents, first edition, 2014, published by Mizan

which includes writing and enshrining and signing these papers legally to deliver it to the demandant.²

To be able to use the features and advantages of commercial documents by check, observance of form conditions should be as mandatory while setting. If issuing the aforementioned document is not observed based on the case, it will lead to invalidity or lack of inclusion of regulations related to the check. The customer can then go to the bank and apply for receiving check after informing about public current interest-free deposit conditions.

Since the purpose of the use of check is to reduce the problem of using cash in business as possible, and in other words it can play the role of money; our legislator addition to the Articles of 310 to 317 of the Commercial Code, with approval of check issuing enacted in 1976, as well as its reform in the years 1993 and 2003, has considered a criminal sanction for it that is if account holder deviate the aforementioned provisions, he can be on criminal prosecution.

In British law, check is as a draft at sight. So it is natural that its mandatory contents follow the same regulations that were said about draft. That is Article 73 of Law 1882 stipulates that unless the cases that have been explicitly stipulated in Part II of law, the regulations of this Act in relation to draft at sight also must be met for check. So, check also like as draft must contains the unconditional command of the issuer to the drawee to pay a certain sum of money to the holder or transfer it for him or to bearer, with the same guarantee of implementation on lack of necessary provisions have been forecasted in Act of 1882 of draft . Since electronic check is message data and for utilizing law support such as paper check, it should have listed aforementioned contents in Commercial Code and law on issuing check , as well as the conditions mentioned in Iranian e-commerce law approved in 2003 and instructions of ordering the payment and transfer of funds approved in 2006.

2. First Topic: Shape of Check

Check sheets with uniform printed forms in pamphlets with numbers of pages counted and specified by the bank is given to the account holder. In none of the studied legal systems, the legislator has not made it as an obligation to set and sign check on specified sheets. So check can be set and signed in a specified sheet.

This means check can be set as a sheet except the bank printed sheets. Of course, provided that firstly all check mandatory conditions that are in other documents such as draft and promissory have been noted, and secondly in accordance with the contract of account opening, the issuer has not been prohibited from this practice. The advantage of printed form is that all the mandatory conditions for check health is observed in it and there will be no need to worry.

Also according to Article 310 of the Commercial Code, if a check is set on a sheet other than bank special sheets, the bank is obliged to pay it all its mandatory form conditions are observed. Of course it appears that if the bank deprives such a right from the customer in contract of opening current account, according to the principle of binding contracts, such checks are not payable. Because as we saw in the check nature, opening a current account contract between the bank and the customer was a non-specified contract in form of Article 10 of the Civil Code, and if be conditioned by the bank, no damage is occurred in this case. The same situation is usually observed in the UK on the forms of opening a current account.³

3. Second Topic: Check Issue Date

According to Article 311 of the Commercial Code, one of the conditions for issuing check is indicating the date and check must have the issue date and shall not be deferred check. Also in accordance with Article 13 of the Law on issuing check (Amendment of 2003), issuing deferred check is prohibited and in case of complaint of the beneficiary and failure to pay, it would be followed by criminal conviction.

Since issuing check is in order to pay to its holder, and it is likely that the payment is for the price for purchasing sale or for the rent of residence or acquisition of issuer on the responsibility of the landlord and so on ..., or principally funds contained therein be given as a loan to check holder, therefore, it seems that indicating date is important especially in terms of including debt or pony mentioned date or pay the price or pay for the price of sale or rent, and in general in terms of determining the reason of issuing the check and pay to the holder.

And it is essential that the date to be noted in letter and in number, and in the case of the contradiction of the two, to be corrected back of the check and actual date to be mentioned and signed, the contradiction of the two dates should be resolved in the context of check. In addition, the date in terms of calculation and pony of issuer current account with the drawee bank is important and has legal effects.

² Ya'ghoub Mahari, Davoud, conditions of liability waiver or limitation in commercial documents (draft, promissory note, check), MS Thesis, 2012, p. 18

³ Barclays Bank PLC .current account p2,London 1992, (application guidance)

On the other hand check holder, as Article 11, must refer to the bank within 6 months from the date of issuance check, and receive a certificate of non-payment Over 6 months from the date of referral to the bank a certificate of non-payment. Over 6 months from the date of referral to the bank and receiving certificate of non-payment, he can do criminal complaint, so that the issuer can legally be prosecuted. Otherwise, with the expiry of the aforementioned deadlines, he will not have the right to a criminal complaint. Hence the importance of indicating the date in number and in letter is specified.

In British law,⁴ check is a document that is payable on demand, so is considered a bills of exchange document.⁵ There is no legal requirement for checking dating of check. But banks according to banking custom, ask the owner of the check to fulfill the date.

4. Third Topic: Unconditional Payment Order of the Amount of Check

Check Issuer in accordance with the principles in his current account when issuing check must have a minimum fund for the amount of mentioned check. Legislator states the presence of fund in the current account in two time periods:

- During the issuance of check

- check holder at the time of going to the bank, although according to the rule, the issuer should not withdraw check amount from his current account in the interval of these two time periods, because most likely check holder refers to the bank a few days or weeks after the date specified in the check context or may refer before the desired date.

Therefore existence of fund in the current account obliges the drawee to pay the amount with check collection. In the case of the absence of balance, certificate of non-payment is issued by the bank according to the provisions for the reason of non-payment and compliance with signature in check and sample signatures of the issuer.

Obviously existence of these two relationships means the current account and the need to pay cash by the drawee bank, without issuing the order of payment by the check issuer will be two related but inappropriate rings. Issuing the order of payment is actually the complementary of their relationship, but it constitutes the main pillar of the theorem. If bank is assumed depository, according to the regulations, depository is obliged to spend the trust received from the truster in accordance with the contract of the parties and at the aim of the truster.

And if the purpose of trusteeship is not clear, in fact, the contract is ambiguous, and will not have legal effect in accordance with the law and protector of the rights of the parties. So it seems that the issuance of payment order in the check context is a key element and an essential condition for the issuance of check. Legal and valid banks that print and put checks at the disposal of their customers that are current account holders mention the issuance of payment order and print it in the check context. So the issuer does not need to write it, and signing below the check confirms the practical acceptance of the mentioned order by the check issuer.

Now must see that check Issuer could give the order of check non-payment or not after the issuance?

Article 14 of the Law on check reform in 1993 has forecasted the order of check non-payment just in the following cases:

- A) In the case of forgery check
- B) In case of stolen check
- C) In case of lost check
- D) In cases of check collection through fraud or barratry or commit other crimes

5. Fourth Topic: Signature of Check

Signature is the most obvious thing that a converts his inner and inward intention to apparent will and completely reveal real intention and will of the person. This had been clearly considered by legislator in Articles of 190 and 191 of the Civil Code.

Article 191 of the Civil Code knows the intention of composition with the subject that implies the intention. This is clearly seen in common law system in European law. European rule "intention to create legal relation"⁶ fully complies with this principle. In jurisprudence it can also easy to reach. Rules such as "العقود تابعه للقصد"⁷ or the

⁴ For more information see: Roberts .Graham,Ibid.p 103, and-Holden .j,Milnes,Ibid,Para 5-15,P 158

⁵ Bills of exchange of Exchange Section 10(1) Act,1882

⁶ Intention to create legal relation

⁷ Mehmannaavazan, Ruhollah, commercial law 3, 2011, Majd Publications, p. 114

opposite concept of the rule "ما وقع لم يقصد و ما قصد لم يقع"⁸ confirms this issue.

Signature in the document is a person's hand direct movement. In terms of the above can be said briefly about the Signature: Physical, without an intermediary, originally with any pen on paper in any intended and desired form and style, throw pen in any way by the subject.⁹ In addition, any document cannot find subjectivism without seal or signature.

About check, the signature on the check must also match with the sample signature at the bank that has been given by the current account owner at the account opening time, otherwise will not be payable or returned.

Today, electronic checks are transmitted by electronic signatures, which is in fact the simple and sure signature.¹⁰ Digital signature is one of the types of sure signatures.

Article 10 of IRAN Electronic Commerce approved on 07.01.2004 says: Electronic signature must have the following qualifications.

(A) be unique to the signatory; (b) indicate the identity of the signatory of message data; (c) be issued by signatory or under his exclusive will; (d) be connected to a "data message" in any way that each change in "data message" can be recognized and discovered.

5.1 First Speech: The Role of Signature on Issuance of Check in Geneva International Regulations

Geneva uniform law approved on June 7, 1930 on draft and promissory note, as well as the other Geneva uniform law approved on March 19, 1931 on check that many countries of the world have been concatenated to them and almost all of Europe continent except England perform them, knows signature of the issuer necessary for the issuance of commercial documents and does not mention seal.

However, Appendix 2 of Geneva Convention of 1930 on draft and promissory note, as well as Annex 2 of the Geneva Convention of 1931 on check, both in Article 2 provide that: each Contracting Party have a right on draft in their territory, promissory note, check to specify what could be alternative of the signature, provided that a thing that is reflected instead of signature in these documents expresses will of who should sign it.

Thus, written Article 2 that is known as Article 2 of "Reservations" has allowed the Governments of signatory and acceding to the conventions on signature of the discussed documents to act in the best interest of them or only recognize signature valid, or announce the seal or gravure of signatory or paraph or anything else that know suitable to has validity instead of a signature.

5.2 Second Speech: Role of Signature in Issuance of Check in Iranian Law

Among commercial documents, a document that creates the most practical problems is check. In the case of natural persons, the question is not so complicated because the mentioned persons proceed to issue check by opening a current account in one of the banks and his signature sample introduction, and drawee banks proceed as common and appropriate if the check following signature matches with samples of signatures in the bank.

Thus, if the account has balance, it pays the check amount to the provider, or that because of lack or deficit of balance, certification of non-payment is issued and surrenders it to check holder. In the case of natural persons, it rarely happens that seal has been presented to the bank along with signature, and based on the obtained information;¹¹ banks do not open a checking account for illiterate clients. So cases that individuals proceed to issue check only with a seal do not occur.

6. Fifth Topic: Check Amount

The other basic conditions of check is indicating of the amount on the check sheet because based on the definition in Article 310 of the Commercial Code, check issuer issues the order to pay all or part of own funds to the drawee. The importance of this issue is to the extent that indicating the amount must be inserted both in number and in letters to avoid any confusion and prevent manipulation. If the check sheet has no amount, it does not subject to the provisions of the mentioned check in Commercial Code and Act of issuance of check.

According to Article 13 of Act of issuance of check reformed in 2003, issuing check blank (without indicating amount) can be criminally prosecuted only by complaint of the beneficiary and this does not affect the accuracy

⁸ What has been realized, was not intention, and what has not been realized, was the intention.

⁹ Mehmannaavazan, Ruhollah, Ibid.

¹⁰ For more information on electronic signatures see: Taghizadeh, Fatemeh, citing of Electronic evidence, master's thesis, Tehran University, Khordad, 2011

¹¹ Fakhari, Amir Hossein, legal ideas (3), second edition, 2010, published by Majd, p 23

of check.

In British law check should contain a certain amount. 1882 draft law does not state that check should be certainly in letters; however when the amount is just in number, the customer is asked to fulfill also the place of letters.

The basis of the validity of the inserted digit in letters (In case of discrepancy with numeric digits) has two reasons:

First reason: Manipulation of the inserted digit in letters and possible changes on it, if not impossible, at least is very difficult because corruption is revealed, and usually in such cases the experts easily recognize it.

Second reason: the manipulation of the inserted digits in number is easily possible, such as conversion of number 1 to 2 or 3, or possible addition of a number between numbers such as zero that may simply be done and more interesting is that detecting manipulation of numbers is also very difficult and sometimes impossible for experts line. For example, in a case raised in court on check, three line experts offered three different opinions on the numeral date of a check (its letters were not inserted) and was claimed counterfeit.¹²

Check amount is the amount of money that the issuer wants to pay. No roof has been specified for check amount, because the most usage of electronic check is in big deals, especially Businessmen transactions with Businessmen (B.2.B), which usually do big deal. Also no minimum amount has been specified for check, but based on commercial custom, for much lower sums, for example, electronic checks are used for 100 thousand Rials, or 10 \$, because electronic check is commonly used more in businessmen relations and they transact also with huge amounts.

7. Sixth Topic: Mentioning the Name of Drawee (Bank Name) on Check

Article 310 of the Commercial Code stipulates that the check issuer gives payment order to the drawee, so the name of the payer must be clear. Today check is normally drawn only on banks, and the name of bank that must pay check amount has printed at the top of check, and the check issuer gives ordered payment order to it. So "because check is only issued the responsibility of bank, name of the bank that must pay the check amount is printed at the top of the check".¹³

"Failure of observance of this condition results in divestment of title of check from the document and its conversion into non-commercial ordinary document. This objection is attributable to the holder, and the issuer will not be subjected to legal and penal provisions on check issuer".¹⁴

According to the Act on issuance of check, as a result, drawee of electronic checks should be banks and non-bank financial credit institutions under this Act cannot issue electronic check, because the issuers of electronic check must be the member of "Satna",¹⁵ and according to the Central Bank Agreement, banks can only become the member of "Satna".

8. Seventh Topic: Indicating Name of Holder

According to Article 312 of the Commercial Code "check may be payable to the bearer, a certain person or remitted to someone. It may be transferred to another merely by signature on the back. "So the check recipient's name may be indicated in one of the following statements in check:

1) Bearer, 2) Remitted to a certain person, 3) Certain person

In two first cases, check can be transmitted through endorsement and if a certain person's name has been mentioned in check without remittance, check is payable only to that certain person and it cannot be transferred without endorsement, but like transference of request follows the terms of civil law. According to the banks' procedure that already have prepared check sheets and this matter have been inserted on each sheet "According to this check, pay the amount of Rials..... Payable to the bearer..... or remitted to". It seems that despite the words "Payable to the bearer "or" remitted to", if only a certain person's name has also been inserted, check can be transmitted through endorsement unless the word of "remitted to" is omitted.

In addition, Article 5 of Geneva uniform law and Article 5 of France legal decision on October 30, 1935 say that check may be payable as follows:

¹² Dorafsheh, Saber, check in current law, first edition, 2012, published by Jangal, P 46

¹³ Domerchili, Mohammad, et al., Commercial Code in current legal order, Eighth 8th Edition, 2008, published by Misagh Edalat, P 578

¹⁴ Ibid, pages of 578 and 579

¹⁵ Satna or immediate gross settlement system is an electronic system that processes and settles transactions between the banks and implements immediate payment order individually and immediately.

- To a certain person without indicating "Payable to the bearer" or with indicating it.
- To a certain person with indicating the word "Payable to the bearer" or its equivalent.
- Payable to the bearer
- If the receiver has not been mentioned in any way in check text, check is considered payable to the bearer.
- If a certain person's name and the word of Bearer are written unanimously, check is considered bearer.

It should be noted that if the check lacks a certain person's name or the word of bearer, it is considered incomplete, and in the case of entitlement, holder can himself proceed to insert the recipient's name or the word of "bearer".

British law in accordance with Article 20 of draft, the holder is allowed to complete the document in his favor and with good faith.¹⁶

Beneficiary in electronic check is natural or legal person who is the holder of the electronic check, and the transfer is carried out on his behalf. However, according to the issuance of payment and transfer orders, the beneficiary can be a financial institution whether bank or non-bank credit institution. The beneficiary characteristics are first name and last name and in countries that merchants have commercial cards, Number merchant is also mentioned.¹⁷ And if the beneficiary is bank or non-bank credit institution, the name of the bank or institution with number of its branch is sufficient.

According to Article 35 of the Civil Code, the seizure as property is the reason of property, unless the contrary is proved. holder of check which is payable to the bearer, when refers to the drawee bank with his full details listed back of the check and submit it to the bank, has the right for receiving the check amount, so drawee bank under Article 321 of the Commercial Code pays check amount by getting bearer check.

Note: natural and legal persons on prevention of check transfer, especially in the case of checks that have high figures, issue check to be payable to the drawee bank in order that check amount to be deposited to the intended account through drawee bank. For example, it is stated in the check text addressing to the drawee bank "To be payable to you (drawee bank) to deposit in an account..... in the name of.....".

9. Conclusion

Check as a substitute for money plays a key role in economic exchange and everyday life. Today its use is unavoidable, and it facilitates and accelerates economic relations. On check position in British law with respect to legislation and treaties in order to unify rules of commercial documents has similar position with check position in Iran and the legal system of our country.

But on the crime of issuing bad check, UK legal system considers criminal description prosecutable and can be punished very exceptional and limited, not on bad and invalid checks, but also of those checks that by manipulating the document "itself" that is the same check in trying to discredit it or taking another's property through fraud and deceit and fraudulent practices that done on the commercial document. And criminal description as "Issuance of bad check" is not relevant in UK legal system.

Legislative of Iran and UK have shown approaches almost similar for check required form conditions. Check in UK is one way to do transactions and business. Act of check in UK is very similar to Act of check in Iran and by inserting signature of the check owner on paper, it is documented, and in term is payable by the bank.

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¹⁶ Skini, Rabia', Comparative Commercial Law, 2nd edition, 2013, by Majd Publications, p. 211, quoting France Article 29 of Act on check

¹⁷ Sardoe Nasab, Mohammad, electronic business documents (draft, promissory note, and electronic check), first volume, first edition, 2014, published by Nashr Mizan, Pa. 240

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