

این ترجمه توسط استاد دکتر غلامرضا تجویدی، استاد دانشگاه علامه طباطبائی،
انجام شده است و با اجازه ایشان منتشر می شود.

The Cheques Law as Amended on August 24, 2003 (02.06.1382)

Official Gazette No. 17067, dated October 1, 2003 (09.07.1382)

No. 43666 Date: Sept. 15, 2003 (24.06.1382)

To: President Khatami

In implementation of Article 123 of IRI's Constitution, enclosed please find the Government Bill No. 24717/30176 dated September 16, 2002 (25.06.1381) concerning the amendments made to the Cheques Law which was approved by the Islamic Consultative Assembly (ICA) in the course of an open session held on August 24, 2003 (02.06.1382), and which was subsequently confirmed by the Guardians Council.

ICA Speaker; M. Karoubi

No. 36870 Date: Sept. 25, 2003 (03.07.1382)

To: The Ministry of Justice

Enclosed please find, for due implementation, the Cheques Law as Amended, which was approved by ICA in the course of an open session held on August 24, 2003 (02.06.1380), confirmed by the Guardians Council on September 3, 2003 (12.06.1382) and which was notified through Letter No. 43666 dated September

15, 2003 (24.06.1382).

President Khatami

Article 1: ¹Cheques shall be of the following types:

¹ As supplemented on November 2, 1993 (11.08.1372). For further information, please see Official Gazette No. 14189 dated November 22, 1993 (01.09.1372).

1. An **Ordinary Cheque** is a cheque which is drawn by an individual on a bank in his current account, and its holder (drawee) has no guarantee but the credibility of the drawer.
2. A **Certified Cheque** is a cheque which is drawn by an individual on a bank to his current account, and payment of whose amount is certified by the transferee bank.

3- A **Guaranteed Cheque** is a cheque which is drawn by a bank on itself upon clients request, and payment of whose amount is guaranteed by the bank.

3. A **Travelers Cheque** is a cheque which is drawn by a bank, and whose amount can be collected at any branch of that bank or paid by the representatives and agents of that bank.

Article 2: Cheques drawn on banks which were or will be established in conformity with Iranian laws inside Iran, as well as the cheques drawn on the branches of such banks abroad shall be considered as enforceable documents. If the holder of such cheques presents the same to the bank but does not receive payment in whole or in part due to lack of sufficient funds or due to any other reasons which culminate in the dishonor of the cheque and its non-payment, he may, with due observance of the laws and regulations pertaining to the execution of notarial documents, collect the amount of the cheque or the balance thereof from the drawer. To obtain an executive writ, the holder of the cheque shall be required to submit the original cheque together with the certificate mentioned in Article 4 or the one described in Article 5, to the local Executive Office of the Deeds Registration Department.

The Executive Office shall issue an executive writ only when the bank certifies that the signature on the cheque corresponds with the specimen signature of the drawer kept by the bank.

By the “beneficiary of a cheque”, it is meant either the person to whose account a cheque is drawn or in whose name the cheque may be endorsed, or the bearer of a cheque (as in the case of cheques which are payable in favor of bearer), or their legal representatives.

Note²: The beneficiary of a dud cheque may demand the court to issue a judgment against the issuer of the bad cheque. For payment of all losses and costs³ incurred by the beneficiary directly and reasonably in collecting his money from the issuer of the cheque either prior to or after the court judgment date. Should the beneficiary demand compensation for his losses and costs after

² As supplemented on May 31, 1997 (10.03.1376) by the Expediency Council. For further information, please see Official Gazette No. 15246, dated June 6, 1997 (16.04.1376).

³ According to Official Gazette No. 15716, dated February 6, 1999 (17.11.1377), in conformity with the Law Adding a Note under Article 2 of the Cheques Law as Amended on May 31, 1997 (10.03.1376), approved by the Expediency Council, by the phrase “all losses and costs”, it is meant “late payment losses which may be incurred beginning as of the date written on the cheque until such time when the cheque amount shall be collected, to be calculated on the basis of the inflation rate which shall be notified by the Central Bank of Iran, as well as the court costs and attorney’s fee, in conformity with the legal rates”.

the court judgment date, then he shall submit his plaint to the same court that has already issued the judgment.

Article 3:⁴ The drawer of a cheque shall be required, on the date written on the cheque, to have an amount in cash equivalent to that indicated on the cheque with the local bank on which the cheque is drawn. He shall neither withdraw from the bank the whole or part of the amount on the basis of which he has drawn the cheque, nor shall he issue instructions to the bank to stop payment of the cheque. He shall not also draw the cheque in such a manner that the bank shall refuse payment on the ground that the signature does not correspond to the specimen, or that there is crossing-out in the text of the cheque, or that there are contradictions in the text of the cheque, and the like. Where a condition shall be stipulated in the text of the cheque, the bank shall ignore such a condition.

Article 3 (BIS)⁵: The amount of a cheque may be collected from the bank exclusively on the date written on the cheque or on a date henceforth.

Article 4: In cases where the amount of a cheque shall not be paid for any of the reasons mentioned in Article 3, the bank shall be required to clearly indicate the ground or grounds of non-payment on a special certificate containing the full specifications of the cheque, the identity, particulars and address of the drawer, and shall submit the same to the holder of the cheque, after having the certificate duly signed and sealed.

The said certificate shall certify whether the signature of the drawer (within the normal banking practices) does or does not correspond to the specimen signature.

The bank shall be required to immediately send the duplicate copy of the said certificate on the last address of the account holder kept by the bank (for the information of the drawer). In the said certificate, the name, surname and full address of the holder of the cheque shall also be recorded.

Article 5: If the funds of the drawer with the bank shall measure less than the amount of the cheque, then upon request of the holder of the cheque, the bank shall be required to pay the entire funds existing in the account to the holder of the cheque. The holder of the cheque shall indicate the amount which he has received on the overleaf of the cheque, and shall submit the same to the bank against receipt of a certificate containing the specifications of the check and the amount which has been paid.

The said cheque shall be considered as a dishonored cheque, for the unpaid balance, and the certificate issued in this connection shall substitute the original copy of the cheque.

For the purposes of the present Article 5, the bank shall also be required to send the certificate mentioned in Article 4 above to the account holder.

⁴ As amended on August 24, 2003 (26.02.1382). For further information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

⁵ As amended on August 24, 2003 (26.02.1382). For further information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

Article 6: Bank shall be required to record, on each and every leaf of a cheque book, the name and surname of the account holder.

Article 7:⁶ Any person who shall commit the offence of drawing a dishonored cheque, shall be sentenced to the punishments described below:

- i. If the amount written on the cheque shall be less than ten million rials (Rls.10,000,000), the cheque drawer shall be sentenced to a punitive jail term not exceeding six (6) months.
- ii. If the amount written on the cheque shall be more than ten million rials (Rls.10,000,000) but shall not exceed fifty million rials (Rls.50,000,000), the cheque drawer shall be sentenced to a punitive jail term ranging between a minimum of six (6) months and a maximum of one (1) year.
- iii. If the amount written on the cheque shall exceed fifty million rials (Rls.50,000,000), the cheque drawer shall be sentenced to a punitive jail term ranging between one (1) and two (2) years. Further, he shall be denied the right to have a cheque book for a period of two (2) years. However, should the holder of a current account draw a number of dishonored cheques, the amount in the aggregate written on such cheques shall function as the basis for the proper punitive measure(s) to be taken against him.

Note: The afore-cited punishments shall not apply in cases where it shall be established that dishonored cheques have been drawn in respect of illegal and illicit transactions and/or usury profits.

Article 8:⁷ Cheques drawn in Iran on banks located abroad and resulting in issuance of non-payment certificates, shall, in penal terms, be governed by the provisions of the instant Law.

Article 9: If, prior to the date of criminal complaint, the cheque drawer shall pay in cash the cheque amount to its holder, or if he shall, with the consent of the complainant, make a new arrangement for payment of the cheque amount, or if he shall have it paid by the drawee bank, he shall not be liable to criminal prosecution.

Under such circumstances, the drawee bank shall be duty-bound to block the balance of the account of cheque drawer up to the cheque amount, in order to pay it to the holder of the cheque upon his seeking recourse to the bank.

⁶ As amended on August 24, 2003 (02.06.1382). For further information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

⁷ As amended on November 2, 1993 (11.08.1372). For further information, please see Official Gazette No. 14189 dated November 22, 1993 (01.09.1372).

Article 10:⁸ Should a person draw a cheque, despite being duly cognizant of closure of his bank account, his act shall be construed as issuing a dud cheque, and shall accordingly be awarded the maximum punishment prescribed in Article 7 above. The said punishment may not be suspended.

Article 11: The offenses mentioned in the present Law shall not be liable to prosecution if no complaint shall be filed by the holder of the cheque. If the holder of the cheque shall not seek recourse to the bank, within a period of six (6) months from the date of issuance of the cheque, for its collection, or if he shall not file a complaint within a period of six (6) months from the date of issuance of the nonpayment certificate, he shall no more be authorized to lodge a criminal complaint.

By “the holder of the cheque” in this Article 11, it is meant “the person who presents the cheque for the first time to the bank”. In order to ascertain who has referred to the bank for the first time to collect the amount of the cheque, banks shall be required to immediately record, upon referring by the holder of the cheque, his complete particulars and precise identity on the overleaf of the cheque, mentioning the date as well.

The persons to whom a cheque shall be assigned after it shall be bounced by the bank, shall not have the right to file a criminal complaint, unless the assignment shall be made through the process of law.

In cases where the holder of a cheque shall be willing to collect the amount of the cheque through another person, as his representative, while reserving his right to file a criminal complaint in case the cheque shall be dishonored, he shall be required to indicate his identity and address mentioning that he is being represented by the said person, on the overleaf of the cheque. Under such circumstances, the bank shall issue the certificate mentioned under Articles 4 and 5 in the name of the owner of the cheque, and his right to file a criminal complaint shall be reserved.

Note: In cases where, after a criminal complaint shall be filed, the complainant shall assign the cheque to another person, or if he shall transfer his rights against the cheque to another person in any manner whatsoever, the criminal prosecution shall be stopped⁹.

Article 12: In cases where the complainant shall withdraw his complaint before issuance of the final judgment, or if the accused shall pay in cash the amount of the cheque together with the late payment damages to the holder thereof, or if he shall cause the grounds of payment of the amount of the cheque as well as the said damages (to be calculated as of the date the cheque shall be presented to the bank), or if he shall deposit the same in the account of the Ministry of Justice or the Executive Office of the Registration Department, the authority dealing with the case shall issue a writ stopping the prosecution.

Issuance of a writ stopping the prosecution in a criminal court shall not stop the court from dealing with other damages and issuing a judgment thereon.

⁸ As amended on November 2, 1993 (11.08.1372). For further information, please see Official Gazette No. 14189 dated November 22, 1993 (01.09.1372).

⁹ For further information, please see Judgment No. 31-61/12/16 pronounced by the Full Bench of the Supreme Court

In cases where the complainant shall waive his rights after issuance of a final judgment, or if the condemned party shall cause the grounds of payment of the amount of the cheque and late payment damages including other damages mentioned in the judgment in the manner set forth above, the execution of the judgment shall be stopped, and the condemned party shall only be liable to payment of an amount equivalent to one-third of the cash penalty prescribed by the judgment which shall be collected, on the instructions by the Public Prosecutor, in favour of the government.

Note:¹⁰ The amount of damages and the manner of calculating the same shall comply with the Law Adding a Note Under Article 2 of the Cheques Law as Amended, approved on May 31, 1997 (10.03.1376), by the Expediency Council.

Article 13:¹¹ Under the following circumstances, the drawer of a cheque shall not be liable to criminal prosecution:

- i. If it shall be established that the cheque has been submitted as a blank cheque.
- ii. If a provision shall be made in the text of the cheque to the effect that payment of the cheque amount shall be dependent upon fulfillment of a condition.
- iii. If a provision shall be made in the text of the cheque to the effect that the cheque is submitted as a guarantee in respect of transaction or in connection with an undertaking.
- iv. If it shall be established that collection of the cheque amount was dependent upon fulfillment of a condition, even if no mention has explicitly been made in the text of the cheque, and if it shall be established that the cheque has been submitted as a guarantee in respect of a transaction or in connection with an undertaking.
- v. If it shall be established that the cheque was not dated or that it was an antedated cheque (i.e. the date on which the cheque was actually drawn was prior to the date written on the cheque).

Article 14:¹² The drawer of a cheque, its beneficiary or legal representatives of both of them, duly explaining that the missing or stolen or forged cheque was obtained through fraud, breach of trust or through committing other offences, may instruct the bank in writing not to pay the amount of the cheque. The bank, after ascertaining the identity of the individual issuing the instructions, shall refuse to pay the amount of the cheque. However, upon presentation of the cheque to the bank, the bank shall issue the non-payment certificate, duly stating the declared reason and shall hand it over.

Holder of the cheque may file a complaint against the individual who has issued the instructions on non-payment of the cheque, and should it be proved that the contention which led to non-payment of the amount of the cheque was false, the instructing individual, besides being awarded

¹⁰ As supplemented on August 24, 2003 (02.06.1382). For further information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

¹¹ As supplemented on August 24, 2003 (02.06.1382). For further information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

¹² As amended on November 2, 1993 (11.08.1372). For further information, please see Official Gazette No. 14189 dated November 22, 1993 (01.09.1372).

the punishment laid down in Article 7 of the instant Law, shall also be sentenced to payment of all damages sustained by the holder of the cheque.

Note 1:¹³ By the “beneficiary” in Article 14 above, it is meant someone in whose name the cheque has been drawn or endorsed, or to whom the cheque has been transferred (or to whom a bearer cheque has been transferred). In cases where instructions shall be issued on non-payment of the amount of a cheque, the bank shall be obligated to keep, in a blocked account, the amount of the cheque until the fate of the cheque shall be decided by an investigating authority or until when instructions shall be withdrawn¹⁴.

Note 2:¹⁵ The individual issuing instructions shall be obligated, after notifying the instructions to the bank, to file a complaint with a judicial forum, and shall submit to the bank a certificate demonstrating filing of the complaint within a period not exceeding one (1) week. Otherwise, the bank, upon expiry of the said period, shall pay the amount of the cheque out of the balance, upon request of the holder of the cheque.

Note 3:¹⁶ Payment of certified cheques and travelers cheques may not be withheld unless such cheques shall be claimed, by the issuing bank, to be counterfeit. Even under such conditions, the right shall be reserved for the cheque holder to file a claim with judicial authorities, in compliance with the provisions set forth in Article 14 above.

Article 15: The holder of the cheque may demand the amount of the cheque as well as the damages sustained, in the criminal court dealing with the matter.

Article 16: Cognizance of all complaints, civil and penal actions concerning cheques shall be taken by the Office of the Public Prosecutor and the courts of law, immediately and out of docket until the end of the proceedings.

Article 17: Presence of the cheque in the hands of the drawer is the proof of its payment and the waiver of the complaint by the complainant, unless the contrary shall be established.

Article 18:¹⁷ The judicial forum considering the offenses pertaining to dishonored cheques shall, in conformity with the provisions made under Article 134 of the Public Courts and Revolutionary Tribunals Procedural Law (Book II: On Penal Matters), approved on September 19, 1999 (28.06.1378) by the Judicial and Legal Affairs Committee of Islamic Consultative Assembly, obtain either a personal surety or a security (including funds in cash, bank guarantees, movable or immovable properties), as the case may be.

¹³ As amended on January 4, 1998 (14.10.1376). For more information, please see Official Gazette No. 15432 dated February 14, 1998 (25.11.1376).

¹⁴ The Law Amending Note 1 and Adding a Note Under Article 14 of the Cheques Law as Amended. For more information, please see Official Gazette No. 15432 dated February 14, 1998 (25.11.1376).

¹⁵ As supplemented on November 2, 1993 (11.08.1372). For more information, please see the Official Gazette No. 14189 dated November 22, 1993 (01.09.1372).

¹⁶ As approved on January 4, 1998 (14.10.1376). For more information, please see Official Gazette No. 15432 dated February 14, 1998 (25.11.1376).

¹⁷ As amended on August 24, 2003 (02.06.1382). For more information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

Article 19: In cases where the cheque shall be drawn by the representative or the attorney of the account holder, whether it being a natural person or a juridical entity, the drawer and the account holder shall be held jointly liable in respect of payment of the amount of the cheque, and the executive writ as well as the judgment of damages shall be issued against both of them on the basis of their joint liability. Moreover, the signatory of the cheque shall have criminal liability in conformity with the provisions of the present Law, unless he shall prove that on payment was caused by the act of the account holder, his subsequent attorney or representative. Under such circumstances, the one who caused non-payment shall have criminal liability.

Article 20:¹⁸ Civil liability of the endorsers of the cheque shall continue to remain as before, in compliance with the relevant laws and regulations.

Article 21:¹⁹ Banks shall be duty-bound to close all current accounts of those individuals who have issued dud cheques on more than one occasion, and whose prosecution has led to the issuance of a bill of indictment, and not to open another current account in their name for a period of three (3) years.

Officials in charge of any bank branch who shall fail to perform the above obligation shall be awarded, in consideration of the circumstances, conditions, frequency and degree of the offense committed by the same, any of the punishments laid down in Article 9 of the Law on Consideration of Administrative Offenses by the Board Attending to Administrative Offenses, as the case may be.

Note 1: The Central Bank of Iran (CBI) shall be obligated to regularly record and maintain the record of those individuals who have issued dud cheques, and shall put a list of such individuals at the disposal of all banks in Iran, in compliance with the provisions of the instant Law.

Note 2: Rules and regulations concerning deprivation of individuals from opening current accounts, and the manner of responding to banks' enquiries shall comply with the by-laws which shall be drawn up and prepared by the Central Bank of Iran to be approved by the Council of Ministers, within a period of three (3) months.

Article 22:²⁰ If it shall prove impossible to have access to the accused, the last address of the accused existing in the bank of drawee shall be considered as his legal domicile, and accordingly all notifications and notices shall be dispatched to the same address.

In cases where the accused shall not be identified in the specified address or in the one existing in bank, or if the address shall signify a false domicile, the certification of facts and circumstances made by the agent/officer in charge shall be considered as if the notice or notification was duly served, and consideration shall continue without it being required to summon the accused through the press.

¹⁸ For further information, please see Judgment No. 536 – 10/07/1369 pronounced by the Full Bench of the Supreme Court.

¹⁹ As amended on November 2, 1993 (11.08.1372).

²⁰ As amended on August 24, 2003 (02.06.1382).). For more information, please see Official Gazette No. 17067 dated October 1, 2003 (09.07.1382).

Article 23: The Cheques Law approved in Khordad 1344 (June 1965) shall hereby be canceled and considered null and void.

ICA Speaker; M. Karoubi