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THE SYSTEM FOR PREVENTING AND COMBATING THE ISSUANCE OF CHEQUES WITHOUT SUFFICIENT FUNDS

Khettou Fayza
Email: f.khettou@univ-chlef.dz
Laboratory for the Reform of Arab Policies in Light of the Challenges of Globalization
Faculty of Law and Political Science
University of Chlef

DEBECHE Riadh
University of Setif 2, Algeria
riadh.debeche@gmail.com

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Abstract

Cheques occupy an important position in commercial and civil transactions and must therefore be protected in a manner that preserves their legal validity. Under Algerian law, the drawer of a cheque that is not backed by sufficient funds may incur criminal liability; however, such liability arises only after a series of procedures have been completed. Responsibility for carrying out these procedures has been assigned to banks, the Public Treasury, and the financial services of Algérie Poste, with the aim of preventing and reducing the issuance of cheques without sufficient funds.

Keywords: cheque; payment incidents; regularisation orders; banking prohibition.

Introduction

Compared with the emergence of commercial law, the cheque is a relatively recent instrument. It appeared in Britain in 1765, while its use in an organised form in France did not begin until 1865, under the Law of 1 June 1865. Although the cheque has been legally established as a commercial instrument in economic life for more than a century and a half, it remains a subject of research and study.

The study of cheques is of considerable importance because they constitute a significant means of payment in civil and commercial financial and economic transactions. Like bills of exchange, promissory notes, electronic payment cards, and other instruments, cheques have become widespread means of payment in contemporary society. A cheque provides an alternative way of settling financial transactions between individuals: a debtor need only issue a cheque in favour of a creditor to discharge a debt. This allows people to avoid the inconvenience of carrying cash at all times, which exposes them to the risk of loss or theft. However, the widespread use of cheques has also been accompanied by practices that undermine the cheque as an instrument and particularly harm its holder. This has made intervention by the Algerian legislature necessary to safeguard the cheque's legal validity.

The reasons for selecting this topic may be divided into subjective and objective factors. The subjective factor arises from the researcher's personal interest in business law in general and the banking system in particular. The topic is also connected to the researcher's professional field, namely banking, and specifically to following legal developments concerning cheques. This has encouraged the researcher to examine the subject. There is also a strong desire to propose amendments to the legislative and regulatory provisions governing procedures for preventing the issuance of cheques without sufficient funds, particularly because the existing procedures have not yet succeeded in curbing this offence.

The objective factors relate to the importance of cheques in economic life. This importance requires researchers to study them carefully in order to protect them as an important means of payment in commercial and civil transactions. This is especially necessary given that the issuance of cheques without sufficient funds has become conspicuously widespread in Algerian society, to the point of constituting a phenomenon that must be addressed.

Because this study concerns the Algerian banking system and its role in reducing the offence of issuing a cheque without sufficient funds, the researcher observed a scarcity of studies addressing the banking system's role in this area. By contrast, numerous studies examine the offence of issuing a cheque without sufficient funds without focusing on the procedural dimension that is the subject of the present research. For the sake of academic accuracy, the researcher identified the following previous study:

— Sabah Chouit, *The Role of Banks in Preventing and Combating Cheque Offences in Light of Algerian Legislation*, University of Mohamed Seddik Ben Yahia, Jijel, Faculty of Law and Political Science, 2007.

That study confined the prevention of cheque offences to banks and did not cover other entities, such as financial institutions, the Public Treasury, and the financial services of Algérie Poste. Article 70 of the Monetary and Credit Law No. 03-11 distinguishes between banks and financial institutions. Accordingly, the previous study does not encompass the subject of the present research, which addresses the banking system as a whole.

It should also be noted that the previous study was published in 2007. The Algerian legislature subsequently regulated payment incidents through Amendment No. 05-02 to the Algerian Commercial Code. However, the relevant banking procedures were not established until 2008,

under Regulation No. 08-01 on arrangements for preventing and combating the issuance of cheques without sufficient funds, as amended in 2011 by Regulation No. 11-07. It is therefore clear that the previous study did not address the newer provisions currently in force concerning the role of the Algerian banking system in preventing the offence of issuing a cheque without sufficient funds.

The references used in this research are varied. The researcher consulted available general works on criminal law that address the criminal aspects of issuing cheques without sufficient funds, helping to analyse the general ideas associated with this offence. For a detailed analysis of the subject, the researcher also consulted legislation and regulations issued by the Bank of Algeria, particularly the Commercial Code and Regulation No. 08-01, as amended and supplemented by Regulation No. 11-07, concerning procedures for preventing and combating the issuance of cheques without sufficient funds, in addition to relevant articles, conference proceedings, and other publications.

In light of the foregoing, and in order to address the various aspects of the subject, the research problem may be formulated as follows:

What banking procedures has the Algerian legislature established to prevent the issuance of cheques without sufficient funds?

To answer this question, the study adopts two research methods, in accordance with the nature and components of the subject. It relies primarily on the analytical method, which involves examining and analysing legal texts in order to identify the legal rules governing the procedures required by the Algerian banking system to prevent the issuance of cheques without sufficient funds. In addition, it employs the descriptive method, which objectively describes the phenomena and factors associated with the issuance of such cheques by collecting, analysing, and interpreting data and information, with a view to developing a comprehensive scientific description.

To examine the subject in a way that covers the aspects considered important and answers the questions raised, the research is organised as follows:

Part One: Banking Procedures Prior to a Payment Incident

First: Consulting the Bank of Algeria’s Central Register of Unpaid Debts

1. Concept of the Central Register of Unpaid Debts

2. The list of unpaid debts

Second: Refusal to Issue Cheque Books to Persons Subject to a Banking Prohibition

1. Refusal to issue cheque books when the application is submitted for the first time

2. Refusal to issue cheque books when the application is not submitted for the first time

Part Two: Banking Procedures Following a Payment Incident

First: Preventive Procedures Following a Payment Incident

1. Reporting the payment incident to the Bank of Algeria's Central Register of Payment Incidents

2. Issuing a certificate of non-payment to the cheque beneficiary

3. Serving a payment order on the drawer following the first payment incident

4. Granting the drawer a second period in which to regularise the payment incident

Second: Enforcement Measures Following a Payment Incident

1. Imposing a banking prohibition on the cheque drawer

2. Imposing the discharge fine on the drawer

3. Enabling the cheque beneficiary to obtain regularisation orders in order to initiate criminal proceedings

Part One: Banking Procedures Prior to a Payment Incident

Under the provisions of the Commercial Code and Regulation No. 08-01, as amended and supplemented, a cheque holder may present the cheque for payment at the counter of the bank where the account is domiciled or, where necessary, through manual clearing. This is the traditional method of collecting the cheque's value. Under the modern method, the holder may present the cheque to any bank with which the holder has an account. This is known as electronic clearing and operates in accordance with the procedures of the Algeria Interbank Electronic Clearing System (ATCI) and the standards governing the exchange of payment instruments between banks. In all cases, the drawee is required to consult the Bank of Algeria's Central Register of Unpaid Debts (first) and then refrain from issuing cheque books to persons subject to a banking prohibition (second).

First: Consulting the Bank of Algeria's Central Register of Unpaid Debts

1. Concept of the Central Register of Unpaid Debts

The Central Register of Payment Incidents was first established by Regulation No. 92-02, which governs the organisation and operation of a central register of unpaid amounts. Article 1 provides that a "Central Register of Unpaid Amounts" is to be established within the structures of the Bank of Algeria and that all financial intermediaries must participate in it.

Under that Regulation, "financial intermediaries" means all banks and financial institutions, the Public Treasury, the financial services of the postal and telecommunications administration, and any other institution that makes payment instruments available to customers and manages them. It should be noted that, following the economic reforms that came after the amendment of the Monetary and Credit Law in 1990, the financial services of the postal and telecommunications administration came to be known as the "financial services of Algérie Poste."

The Central Register of Payment Incidents operates by centralising information about cheques presented for payment but unpaid because funds are absent or insufficient, and communicating

that information to financial intermediaries so that they can consult and use it, particularly when issuing a customer's first cheque book.

2. The List of Unpaid Debts

Through the Central Register of Payment Incidents, the Bank of Algeria periodically prepares a list of persons prohibited from issuing cheques and circulates it to financial intermediaries. The Bank of Algeria also seeks to keep the list current and up to date on the basis of information supplied by financial intermediaries concerning payment incidents occurring within their services.

Second: Refusal to Issue Cheque Books to Persons Subject to a Banking Prohibition

1. Refusal to Issue Cheque Books When the Application Is Submitted for the First Time

A person applying to a bank to open a bank account may already be subject to a banking prohibition imposed by another drawee bank. Accordingly, on pain of civil liability, the bank with which the current account is to be domiciled must check the list of persons prohibited from issuing cheques without sufficient funds before issuing a cheque book. If the applicant appears on the list of persons prohibited from issuing cheques, the drawee must refuse to issue any cheque book.

Article 2 of Regulation No. 08-01 on arrangements for preventing and combating the issuance of cheques without sufficient funds confirms that the system for centralising information about cheque payment incidents caused by the absence or insufficiency of funds relies on the dissemination of information among banks, the Public Treasury, and the financial services of Algérie Poste. These entities may consult and use the information, particularly when issuing a customer's first cheque book.

2. Refusal to Issue Cheque Books When the Application Is Not Submitted for the First Time

A person applying for a cheque book may previously have received a cheque-book form from the drawee and may submit a further application to obtain additional cheque-book forms. In such circumstances, the drawee must refuse to issue further cheque-book forms if the applicant has been included on the list of persons prohibited from issuing cheques without sufficient funds.

Part Two: Banking Procedures Following a Payment Incident

After financial intermediaries have carried out the legal procedures required before a payment incident occurs, as provided for in the Commercial Code—particularly Article 526 bis 1—and Article 3 of Regulation No. 08-01 on arrangements for preventing and combating the issuance of cheques without sufficient funds, they are required, on pain of civil liability, to comply with a set of procedures that apply after a payment incident. These consist first of preventive procedures and then of enforcement measures that all financial intermediaries must implement.

First: Preventive Procedures Following a Payment Incident

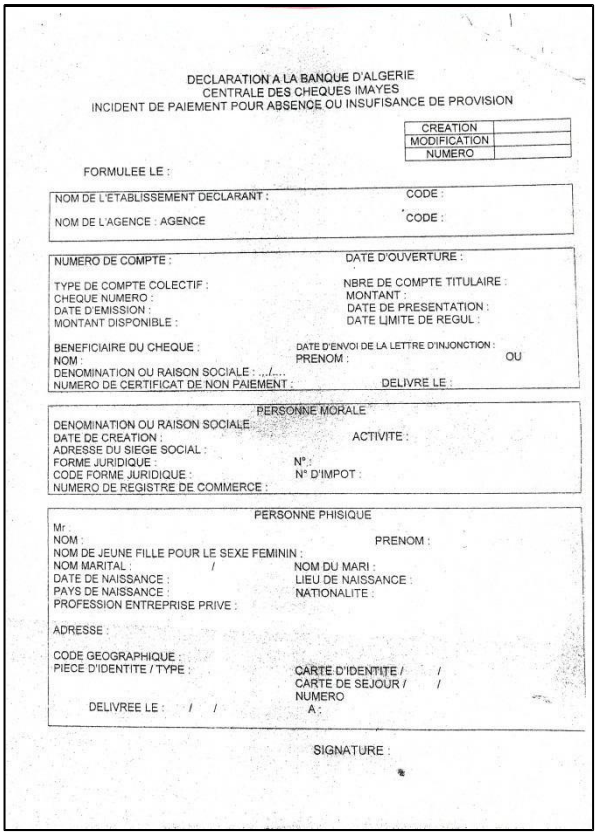
Once a payment incident occurs, the drawee must comply with a series of procedures laid down in Article 526 bis and the following provisions of the Commercial Code, as well as Regulation No. 08-01, as amended and supplemented by Regulation No. 11-07.

1. Reporting the Payment Incident to the Bank of Algeria's Central Register of Payment Incidents

As discussed in Part One, the Central Register of Payment Incidents operates through a system for centralising information concerning cheque payment incidents resulting from the absence or insufficiency of funds. This information is disseminated to banks, the Public Treasury, and the financial services of Algérie Poste so that they can consult and use it, particularly when issuing a customer's first cheque book.

Accordingly, the aforementioned financial intermediaries are required to report any payment incident resulting from the absence or insufficiency of funds within four (04) working days following the presentation of the cheque, using any of the methods of presentation provided for in Article 502 of the Commercial Code.

It should be noted that Article 502 of the Commercial Code addresses two methods of presenting a cheque for payment, namely:



DECLARATION A LA BANQUE D'ALGERIE
CENTRALE DES CHEQUES IMAYES
INCIDENT DE PAIEMENT POUR ABSENCE OU INSUFISANCE DE PROVISION

CREATION
MODIFICATION
NUMERO

FORMULEE LE :

NOM DE L'ETABLISSEMENT DECLARANT : CODE :
NOM DE L'AGENCE : AGENCE CODE :

NUMERO DE COMPTE : DATE D'OUVERTURE :
TYPE DE COMPTE COLECTIF : NBRE DE COMPTE TITULAIRE :
CHEQUE NUMERO : MONTANT :
DATE D'EMISSION : DATE DE PRESENTATION :
MONTANT DISPONIBLE : DATE LIMITE DE REGUL :

BENEFICIAIRE DU CHEQUE : DATE D'ENVOI DE LA LETTRE D'INJONCTION :
NOM : PRENOM : OU
DENOMINATION OU RAISON SOCIALE : .../....
NUMERO DE CERTIFICAT DE NON PAIEMENT : DELIVRE LE :

PERSONNE MORALE
DENOMINATION OU RAISON SOCIALE :
DATE DE CREATION : ACTIVITE :
ADRESSE DU SIEGE SOCIAL :
FORME JURIDIQUE : N° :
CODE FORME JURIDIQUE : N° D'IMPOT :
NUMERO DE REGISTRE DE COMMERCE :

PERSONNE PHISIQUE
Mr :
NOM : PRENOM :
NOM DE JEUNE FILLE POUR LE SEXE FEMININ :
NOM MARITAL : / NOM DU MARI :
DATE DE NAISSANCE : LIEU DE NAISSANCE :
PAYS DE NAISSANCE : NATIONALITE :
PROFESSION ENTREPRISE PRIVE :

ADRESSE :

CODE GEOGRAPHIQUE :
PIECE D'IDENTITE / TYPE : CARTE D'IDENTITE / /
CARTE DE SEJOUR / /
NUMERO
DELIVREE LE : / / A :

SIGNATURE :

a. The Traditional Method of Presenting a Cheque for Payment

This method involves presenting the cheque for payment at the counter of the bank where the account is domiciled or, where necessary, through manual clearing. Under this procedure, the cheque holder presents the cheque to the drawee bank that issued the cheque book to the drawer and submits it at the counter for manual clearing.

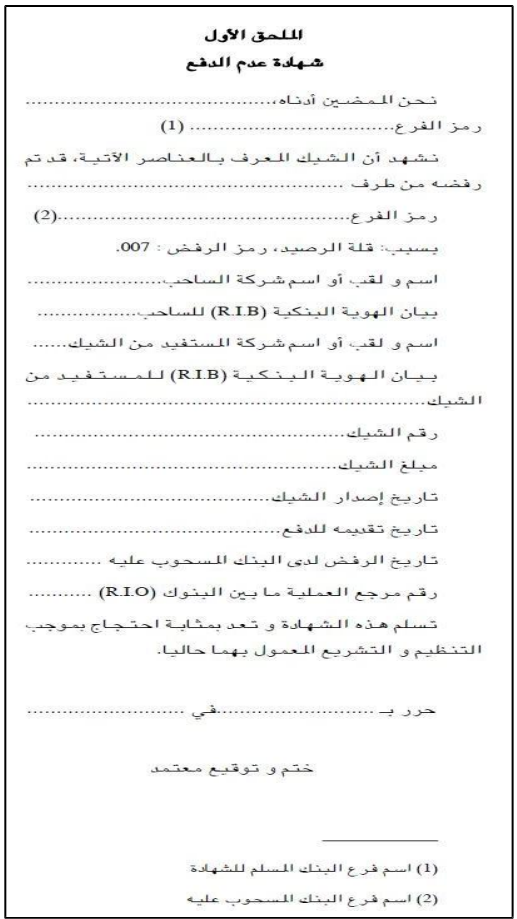
b. The Modern Method of Presenting a Cheque for Payment

Under the modern method, the cheque holder may present the cheque for payment at any bank, provided that the holder maintains a bank account registered in their name with the bank to which the cheque is presented. This banking operation is known as electronic clearing and is carried out in accordance with the operating procedures of the Algeria Interbank Electronic Clearing System (ATCI) and the standards governing the exchange of payment instruments between banks.

1. Issuing a Certificate of Non-Payment to the Cheque Beneficiary

Once the cheque has been presented for payment using either of the two methods mentioned above, and a payment incident occurs due to the absence or insufficiency of funds, the financial intermediaries are required to issue a certificate of non-payment to the cheque beneficiary, depending on the method used to present the cheque for payment.[1]

a. Issuing a Certificate of Non-Payment When the Cheque Is Presented for Payment Through Manual Clearing



الملحق الأول
شهادة عدم الدفع

نحن الممضين أدناه.....
رمز الفرع..... (1)
نشهد أن الشيك المعرف بالعناصر الآتية، قد تم رفضه من طرف .....
رمز الفرع.....(2)
بسبب: قلة الرصيد، رمز الرفض : 007.
اسم و لقب أو اسم شركة الساحب.....
بيان الهوية البنكية (R.I.B) للساحب.....
اسم و لقب أو اسم شركة المستفيد من الشيك.....
بيان الهوية البنكية (R.I.B) للمستفيد من الشيك.....
رقم الشيك.....
مبلغ الشيك.....
تاريخ إصدار الشيك.....
تاريخ تقديمه للدفع.....
تاريخ الرفض لدى البنك المسحوب عليه .....
رقم مرجع العملية ما بين البنوك (R.I.O) .....
تسلم هذه الشهادة و تعد بمثابة احتجاج بموجب التنظيم و التشريع المعمول بهما حاليا.

حرر بـ .....في .....

ختم و توقيع معتمد

(1) اسم فرع البنك المسلم للشهادة
(2) اسم فرع البنك المسحوب عليه

When a cheque is presented for payment through manual clearing, the drawee is required, pursuant to Article 4 of Regulation No. 11-07, which amends and supplements Regulation No. 08-01, to issue a certificate of non-payment in accordance with the standard form annexed to the Regulation.

The drawee must therefore prepare the certificate of non-payment using the prescribed standard form and deliver it to the cheque holder as soon as the cheque is presented for manual clearing.[2]

b. Issuing a Certificate of Non-Payment When a Cheque Is Presented for Payment Through Electronic Clearing

The procedure for issuing a certificate of non-payment differs depending on whether the cheque is presented for payment through manual clearing or electronic clearing. Under the electronic clearing system, the cheque holder must submit the cheque to the presenting bank and wait for four (4) days for the transaction to be completed and finalised.

The process begins when the cheque holder or beneficiary submits the original cheque to the presenting bank. The latter then scans the cheque and electronically transmits its image, data, and details to the electronic clearing house. The transaction is subsequently processed by transferring the amount of the cheque, representing the payment provision, from the drawer's account to the beneficiary's account.

However, if the drawer's account contains insufficient funds to complete the transaction, or if the account has no funds at all, the presenting bank is required, upon rejection of the cheque through the electronic clearing system, to prepare and issue a certificate of non-payment to the cheque beneficiary, in accordance with the operating procedures of the electronic clearing system.



مؤسسة : .....
فرع : .....
الاسم و اللقب، أو اسم الشركة أو التسمية التجارية:
العنوان :

الموضوع : أمر بالتسوية بعد أول عارض دفع

السيدة، الآنسة، السيد

يؤسفنا أن نبلغكم بأن الشيك رقم ..... بقيمة ..... الصادر بتاريخ ..... المسحوب على حسابكم رقم ..... لأمر ..... و المقدم للدفع بتاريخ ..... قد تم رفضه بسبب: انعدام (أو قلة) الرصيد.

طبقا للتنظيم المعمول به، تم تسليم شهادة عدم الدفع لصالح المستفيد و التي تعادل عقد الاحتجاج تطبيقا لأحكام المادة 531 من القانون التجاري و كان محل تصريح عارض الدفع لدى مركزية المستحقات غير المدفوعة لبنك الجزائر.

و عليه، قصد تفادي الحظر المصرفي الذي تخضعون إليه، ندعوكم إلى تسوية الوضعية الخاصة بعارض الدفع المذكور أعلاه في أجل عشرة (10) أيام ابتداء من تاريخ بعث هذه الرسالة و هذا بتكوين رصيد كاف و متوفر لتسوية الشيك وهذا خلال المهلة المحددة أعلاه.

و في حالة عدم القيام بالتسوية في المدة المحددة، طبقا للأحكام القانونية، سيطبق عليكم إجراء المنع من إصدار الشيكات لمدة خمس (5) سنوات ابتداء من تاريخ بعث رسالة الأمر بالإيعاز، و بموجب هذا :

– لا يمكنكم إصدار شيكات على كل حساباتكم ما عدا تلك المتعلقة بالسحب (شيك شباك) لدى المسحوب عليه،

– يتعين عليكم رد نماذج الشيكات التي بحوزتكم أو بحوزة مفوضيكم،

قصد استعادة إمكانية إصدار الشيكات، يتعين عليكم دفع غرامة التهديدية لفائدة الخزينة العمومية بالإضافة إلى مبلغ الشيك غير المسدد.

ندعوكم في المستقبل إلى أن تتأكدوا جيدا من وجود رصيد كاف قبل إصدار أي شيك. في حالة تكرار عارض الدفع في غضون اثني عشر (12) شهرا ابتداء من مهلة الإيعاز هذه ستكونون محل المنع من إصدار الشيكات لمدة خمس (5) سنوات بدون إمكانية التسوية.

حرر بـ .....في .....

Without prejudice to the provisions governing the presenting aforementioned four (4)-day period, the cheque was institution (i.e., the bank at which the certificate of submitted for payment) must send the without non-payment to the drawee institution delay.[3]

Under the aforementioned regularisation order, the drawer is notified of all the relevant details of the cheque, most importantly its number, amount, date of issuance, account number, beneficiary's name, and date of presentation. The drawer is also informed that the drawee has issued a certificate of non-payment in favour of the beneficiary, which is equivalent to a formal protest pursuant to Article 531 of the Commercial Code. In addition, the drawer is notified that the drawee has reported the payment incident to the Bank of Algeria's Central Register of Unpaid Debts.

a. Granting a Ten (10)-Day Period to Regularise the Payment Incident

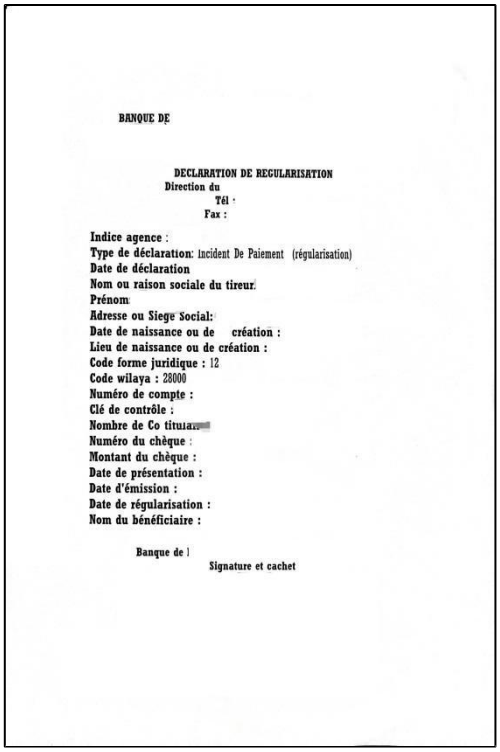
Under the aforementioned regularisation order, the drawer is informed that the banking prohibition may be avoided if the payment incident is regularised within ten (10) days from the date on which the notice is sent. This requires the provision of sufficient available funds to cover the cheque. The drawer is notified by means of a formal instruction letter sent by registered mail with acknowledgment of receipt.

The payment incident must be regularised within the ten (10)-day period, which is demonstrated by making sufficient funds available to cover the cheque. This requires the drawer to deposit an adequate amount into the account associated with the cheque in respect of which the payment incident occurred. Once the drawer has made the required funds available, the drawee notifies the Bank of Algeria that the payment incident has been regularised.

In this case, the drawer avoids the five (5)-year banking prohibition provided for under Article 526 bis 3 of the Commercial Code, as well as the discharge fine payable to the Public Treasury pursuant to Article 526 bis 5 of the Commercial Code.

b. Consequences of Failure to Regularise the First Payment Incident Within Ten (10) Days

If the initial ten (10)-day regularisation period granted to the drawer expires without the payment incident being regularised, a banking prohibition is imposed on the cheque drawer and applies to all accounts held by the drawer with the drawee. This is implemented through a series of procedures carried out by the drawee, namely:



BANQUE DE

DECLARATION DE REGULARISATION
Direction du
Tél :
Fax :

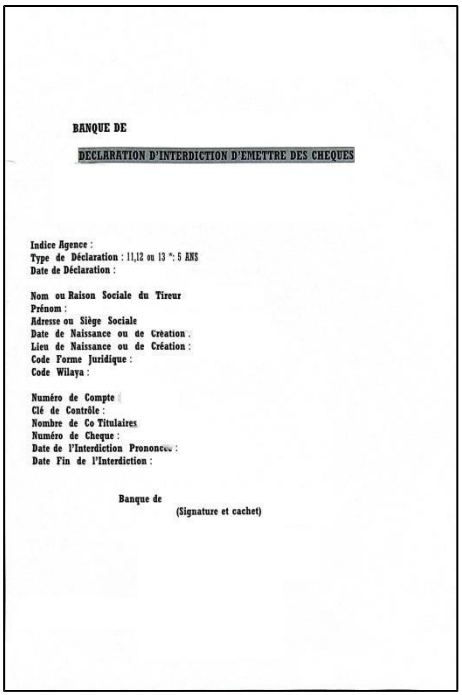
Indice agence :
Type de déclaration: Incident De Paiement (régularisation)
Date de déclaration
Nom ou raison sociale du tireur
Prénom
Adresse ou Siege Social:
Date de naissance ou de création :
Lieu de naissance ou de création :
Code forme juridique : 12
Code wilaya : 28000
Numéro de compte :
Clé de contrôle :
Nombre de Co titulaires
Numéro du chèque :
Montant du chèque :
Date de présentation :
Date d'émission :
Date de régularisation :
Nom du bénéficiaire :

Banque de
Signature et cachet

1. Imposition of a Prohibition on the Drawer from Issuing Cheques (Banking Prohibition)

Once the ten-day regularisation period expires without the payment incident being regularised, the drawee imposes a banking prohibition on all accounts held by the drawer with that institution for a period of five (5) years, commencing from the date of the second regularisation order.

In addition, pursuant to Article 526 bis 7 of the Commercial Code, the drawee notifies the Bank of Algeria, specifically the Central Register of Unpaid Debts, of the prohibition so that the drawer's name can be included in the list of persons prohibited from issuing cheques. In accordance with Article 526 bis 8 of the Commercial Code, the Bank of Algeria regularly updates the register of payment incidents by including the drawer's name and notifying all financial intermediaries, thereby requiring them to enforce the banking prohibition against the drawer of a cheque issued without sufficient funds.



BANQUE DE

DECLARATION D'INTERDICTION D'EMETTRE DES CHEQUES

Indice Agence :
Type de Déclaration : 11,12 ou 13 *: 5 ANS
Date de Déclaration :

Nom ou Raison Sociale du Tireur
Prénom :
Adresse ou Siège Sociale
Date de Naissance ou de Création :
Lieu de Naissance ou de Création :
Code Forme Juridique :
Code Wilaya :

Numéro de Compte
Clé de Contrôle :
Nombre de Co Titulaires
Numéro de Cheque :
Date de l'Interdiction Prononcée :
Date Fin de l'Interdiction :

Banque de
(Signature et cachet)

Consequently, the banking prohibition initially imposed by the drawee is extended to all financial intermediaries, including the Public Treasury, financial institutions, and the financial services of Algérie Poste.

It should also be recalled that the drawee records an objection against the account of the drawer who issued the cheque without sufficient funds. As a result, the drawer is

prohibited from regularising any other cheque, including cheques issued before the banking prohibition was imposed.

2. Requesting the Return of Cheque Forms (Cheque Books)

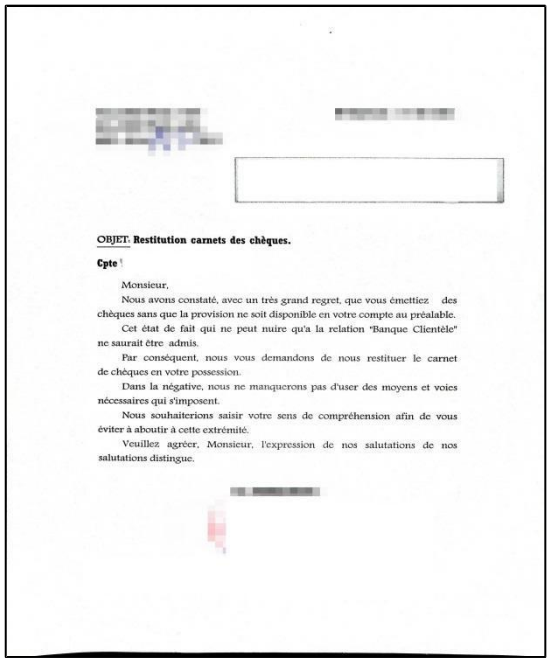
Pursuant to Article 526 bis 9 of the Commercial Code, the drawee must refrain from issuing any cheque-book forms to a drawer subject to a banking prohibition. The drawee is also required to request the return of any unused cheque forms still held by the customer concerned.

Accordingly, the drawer who is subject to a prohibition on issuing cheques is notified of this requirement by registered mail with acknowledgment of receipt.

1. Granting the Drawer a Second Period to Regularise the Payment Incident

When the initial ten (10)-day regularisation period, calculated from the date of the formal notice, expires without the drawer making sufficient funds available in the account, the banking prohibition is imposed directly on the drawer. The Bank of Algeria is then notified of the banking prohibition imposed on the drawer who issued a cheque without sufficient funds.

At the same time, however, the Algerian legislature has provided the drawer with an opportunity to have the banking prohibition lifted and regain the ability to issue cheques. This requires the drawer to complete a series of procedures, which will be discussed below.



OBJET: **Restitution carnets des chèques.**

Cpte !

Monsieur,

Nous avons constaté, avec un très grand regret, que vous émettiez des chèques sans que la provision ne soit disponible en votre compte au préalable.

Cet état de fait qui ne peut nuire qu'a la relation "Banque Clientèle" ne saurait être admis.

Par conséquent, nous vous demandons de nous restituer le carnet de chèques en votre possession.

Dans la négative, nous ne manquerons pas d'user des moyens et voies nécessaires qui s'imposent.

Nous souhaiterions saisir votre sens de compréhension afin de vous éviter à aboutir à cette extrémité.

Veuillez agréer, Monsieur, l'expression de nos salutations de nos salutations distingue.

a. Granting a Twenty (20)-Day Period to Regularise the Payment Incident and Lift the Banking Prohibition

The Algerian legislature has granted a drawer who is prohibited from issuing cheques a second period in which to regularise the payment incident, thereby enabling the drawer to have the banking prohibition lifted. This second period begins immediately upon the expiry of the initial ten (10)-day period. At that point, the banking prohibition is imposed on the drawer, who is notified that they are prohibited from issuing cheques for a full period of five (5) years, commencing from the date of the first payment order.

Pursuant to Article 526 bis 4 of Regulation No. 08-01, as amended and supplemented, any person prohibited from issuing cheques may recover the right to do so by completing the following procedures:

1. Settling the Amount of the Unpaid Cheque by Making Sufficient Funds Available with the Drawee

Article 526 bis 4 of the Commercial Code specifies the methods for regularising a payment incident. However, this specification is not exhaustive, as the legislature has left the drawer free to provide evidence that the unpaid cheque has been regularised. Accordingly, the drawer may settle the cheque outside the bank account through cash payment or by any other method that provides proof of settlement.

Nevertheless, it should be noted that Regulation No. 08-01, as amended and supplemented, requires the drawer to regularise the payment incident by making sufficient funds available in the bank account. This means that settlement carried out outside the bank account is not recognised for this purpose. Financial intermediaries rely in this regard on the wording contained in the

second regularisation order, which states: "... subject to the provision of sufficient available funds with our bank ...".

This wording indicates that settlement must be effected through the drawer's bank account by making sufficient funds available to cover the amount of the cheque in respect of which the payment incident occurred.

As for the method of sending the regularisation order during the second period, it must be sent by registered mail with acknowledgment of receipt. Any procedural irregularity may invalidate all the legal consequences arising from the payment incident, the most significant of which is the penalty prohibiting the issuance of cheques without sufficient funds.



مؤسسة : .....
فرع : .....
الاسم و اللقب أو اسم الشركة أو التسمية التجارية:
العنوان :

الموضوع : أمر بالتسوية خلال المهلة الثانية للتسوية

السيدة، الآنسة، السيد

يؤسفنا أن نبلغكم بأن الشيك رقم ..... بقيمة ..... الصادر بتاريخ ..... المسحوب على حسابكم رقم ..... لأمر ..... و المقدم للدفع بتاريخ ..... قد تم رفضه بسبب انعدام (أو قلة) الرصيد.

طبقا للتنظيم المعمول به، تم تسليم شهادة عدم الدفع لصالح المستفيد والتي تعادل عقد الاحتجاج تطبيقا لأحكام المادة 531 من القانون التجاري و كان محل تصريح عارض الدفع لدى مركزية المستحقات غير المدفوعة لبنك الجزائر.

يجدر بنا التذكير أن العارض الخاص بالدفع الذي تم إعلامكم به بموجب رسالة أمر بالإيعاز موصى عليها مع وصل بالاستلام بتاريخ ..... لم يتم تسويته خلال المهلة الأولى (10) عشرة أيام.

وعليه نبلغكم بأنكم ممنوعون من إصدار الشيكات لمدة خمس (5) سنوات ابتداء من تاريخ ..... وهذا، تطبيقا للأحكام القانونية و التنظيمية المعمول بها، وبموجب هذا :

– لا يمكنكم إصدار شيكات على كل حساباتكم ما عدا تلك المتعلقة بالسحب (شيك الشباك) لدى المسحوب عليه،

– يتعين عليكم رد نماذج الشيكات التي بحوزتكم أو بحوزة مفوضيكم.

إلا أنه حتى يمكنكم استعادة إمكانية إصدار الشيكات، يتعين عليكم دفع غرامة التبرئة لفائدة الخزينة العمومية التي يقدر مبلغها بـ ..... دينار بالإضافة إلى مبلغ الشيك مقابل تكوين مؤونة كافية ومتاحة لدى بنكنا و هذا في مدة عشرين (20) يوما ابتداء من انقضاء مهلة الإيعاز الأولى.

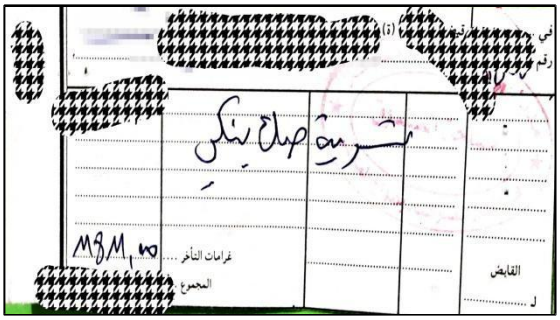
ندعوكم في المستقبل إلى أن تتأكدوا جيدا من وجود رصيد كاف قبل إصدار أي شيك. في حالة تكرار عارض الدفع في غضون اثني عشر (12) شهرا ابتداء من مهلة الإيعاز هذه ستكونون محل المنع من إصدار الشيكات لمدة خمس (5) سنوات بدون إمكانية التسوية.

حرر بـ .....في .....

2. Payment of the Discharge Fine to the Public Treasury

After the expiry of the initial ten (10)-day regularisation period, the drawer must take additional steps to recover the right to issue cheques. Making sufficient funds available in the account held with the drawee is not, in itself, sufficient to restore this right. The drawer must also pay a discharge fine to the Public Treasury, amounting to one hundred (100) Algerian dinars for each one thousand (1,000) dinars, or fraction thereof.

For example, if the drawer issues a cheque for DZD 1,534,076.25 (one million five hundred and thirty-four thousand seventy-six Algerian dinars and twenty-five centimes) without sufficient funds to cover it, the drawer must make the required amount available in the account held with the drawee. In addition, the drawer must pay a discharge fine to the Public Treasury amounting to DZD 153,407.62 (one hundred and fifty-three thousand four hundred and seven Algerian dinars and sixty-two centimes).



3. Reporting the Regularisation of the Payment Incident to the Bank of Algeria During the Second Regularisation Period

Once the drawer has made sufficient funds available in the account held with the drawee and paid the discharge fine to the Public Treasury, the drawer may have the banking prohibition lifted, thereby recovering the right to issue cheques before the expiry of the five-year prohibition period calculated from the date of the first regularisation order.

The drawee, in turn, is responsible for notifying the Bank of Algeria and the Central Register of Unpaid Debts that the payment incident has been regularised. This enables the Central Register of Unpaid Debts to remove the drawer's name from the list of persons prohibited from issuing cheques.

b. Consequences of Failure to Regularise the Payment Incident During the Second Regularisation Period

As previously explained, the prohibition on issuing cheques without sufficient funds applies to all accounts held by the drawer with the drawee as soon as the initial regularisation period expires. However, extending this prohibition to all accounts held by the drawer with all financial intermediaries requires intervention by the Bank of Algeria through the Central Register of Unpaid Debts. This occurs after both the first and second regularisation periods have expired.

Once the second regularisation period expires, the Central Register of Unpaid Debts verifies whether the drawee has reported the regularisation of the payment incident within the prescribed period. If no such notification has been received, the Register includes the drawer's name in the list of persons prohibited from issuing cheques and circulates that list to all financial intermediaries, pursuant to Article 526 bis 8 of the Commercial Code.

Second: Enforcement Measures Following a Payment Incident

1. Imposition of a Banking Prohibition on the Cheque Drawer

Article 526 bis 3 of the Commercial Code and Article 9 bis of Regulation No. 11-07, amending and supplementing Regulation No. 08-01, provide that the drawee must prohibit the drawer from issuing cheques for a period of five (5) years if the regularisation procedures stipulated in Article

526 bis 2 prove unsuccessful, or if a payment incident recurs within the twelve (12) months following the initial incident, even if the initial incident has been regularised.

For the purposes of Articles 526 bis 3 and 526 bis 5 of the Commercial Code, a recurring payment incident occurs when a subsequent incident arises following the presentation of a cheque without sufficient funds within the twelve (12)-month period following the first payment incident, even if the latter has been regularised.

Conversely, a payment incident that has been regularised in accordance with the Commercial Code and the regulations of the Bank of Algeria is no longer subject to this recurrence rule once twelve (12) months have elapsed from the date of the incident. However, if a second payment incident occurs before the expiry of that twelve (12)-month period, the banking prohibition is imposed directly on the drawer, without granting the drawer any opportunity to avoid the prohibition on issuing cheques.

A person who commits a recurring payment incident is also required to make sufficient funds available immediately upon being notified of the prohibition. The notification warns the drawer that failure to regularise the situation by making sufficient funds available with the drawee and paying a fine to the Public Treasury equal to twice the discharge fine may entitle the cheque beneficiary to initiate criminal proceedings against the drawer. This requirement is confirmed by Article 526 bis 6 of the Commercial Code.

2. Enabling the Cheque Beneficiary to Obtain Regularisation Orders for the Initiation of Criminal Proceedings

In addition to the aforementioned procedures, the drawee is required to provide the cheque beneficiary with copies of the regularisation orders in the following two situations:

a. Expiry of Both the First and Second Regularisation Periods Without Regularisation

The regularisation orders issued by the drawee following an initial payment incident differ from the order issued to the drawer in the event of a recurring payment incident.

In the first situation, pursuant to Article 526 bis 6, the drawee is required to provide the beneficiary with a copy of the regularisation order issued following the first payment incident, as well as a copy of the regularisation order issued during the second regularisation period.

After obtaining the certificate of non-payment, the beneficiary must return to the drawee, following the expiry of the periods specified in Articles 526 bis 2 and 526 bis 4, using the procedure corresponding to the method by which the cheque was originally presented for payment. The drawee is then required to provide the beneficiary with copies of the regularisation orders previously sent to the drawer.

b. Where the Drawer Commits a Recurring Payment Incident

When a payment incident recurs within twelve (12) months from the date of the first incident, the drawee is required to provide the beneficiary with a single document, namely, a copy of the notice of banking prohibition in the event of a recurring payment incident.

It should be noted that, on the basis of this notice, the beneficiary may initiate criminal proceedings against the drawer without having to wait for any additional period. This differs from the time limits applicable in the first situation.



مؤسسة : .....
فرع : .....
الاسم و اللقب أو اسم الشركة أو التسمية التجارية:
العنوان :

الموضوع : إشعار بالحظر في حالة تكرار عارض الدفع

السيدة، الآنسة، السيد

يؤسفنا أن نبلغكم بأن الشيك رقم ..... بقيمة ..... الصادر بتاريخ ..... المسحوب على حسابكم رقم ..... لأمر ..... و المقدم للدفع بتاريخ ..... قد تم رفضه بسبب: انعدام (أو قلة) الرصيد.

طبقا للتنظيم المعمول به، تم تسليم شهادة عدم الدفع لصالح المستفيد والتي تعادل عقد الاحتجاج تطبيقا لأحكام المادة 531 من القانون التجاري و كان محل تصريح عارض الدفع لدى مركزية المستحقات غير المدفوعة لبنك الجزائر.

يجدر بنا التذكير أن العارض الثاني بالدفع يقع خلال اثني عشر (12) شهرا بعد أول عارض دفع.

وعليه نبلغكم بأنكم ستوعون من إصدار الشيكات لمدة خمس (5) سنوات ابتداء من تاريخ..... وهذا، تطبيقا للأحكام القانونية و التنظيمية المعمول بها. وبموجب هذا :

– لا يمكنكم إصدار شيكات على كل حساباتكم ما عدا تلك المتعلقة بالسحب: (شباك الشباك) لدى المسحوب عليه.

– يتعين عليكم رد نماذج الشيكات التي بحوزتكم أو بحوزة مفوضيكم.

يتعين عليكم دفع غرامة تساوي ضعف غرامة التبرئة لفائدة الخزينة العمومية التي يقدر مبلغها بـ..... دينار بالإضافة إلى مبلغ الشيك مقابل تكوين مؤونة كافية ومتاحة لدى بنكنا. ويجدر بنا التذكير أنه في حالة عدم تسوية هذه الوضعية، يمكن للمستفيد من الشيك أن يباشر متابعات جزائية ضدكم.

طبقا للأحكام القانونية و التنظيمية المعمول بها، كل احتجاج ضد قرار الحظر هذا و كذا الغرامة يحال إلى المحاكم المختصة.

حرر بـ .....في .....

Accordingly, the drawee imposes the banking prohibition immediately upon the recurrence of the payment incident, thereby prohibiting the drawer from issuing cheques for a full period of five (5) years.

Conclusion

In conclusion, this study has identified the procedures implemented by financial intermediaries. The Algerian legislature has established a set of banking procedures, the most important of which are those governing payment incidents under the Commercial Code, as well as the provisions of Regulation No. 08-01, as amended and supplemented by Regulation No. 11-07, concerning arrangements for preventing and combating the issuance of cheques without sufficient funds. These are complemented by Bank of Algeria Instruction No. 01-11, dated 9 March 2011.

It is evident that the procedures imposed by the Algerian legislature are stringent, both in terms of the statutory time limits and the penalties resulting from non-compliance with the prescribed procedures.

Findings

- Although the Algerian legislature introduced an electronic clearing system for payment instruments in 2005 and established a system for dealing with payment incidents through the 2005 amendment to the Commercial Code, the Bank of Algeria's regulations specifying how payment incidents are to be regularised were not adopted until 2008.

- The Algerian legislature has divided the procedures into preventive measures to be implemented before the occurrence of payment incidents and enforcement measures to be applied after such incidents occur.

- One of the most important safeguards protecting the cheque holder or beneficiary is the imposition of civil liability on the drawee, which is required to compensate the drawer for all damages incurred.

- One of the main shortcomings of the system for centralising information on payment incidents is that it continues to rely on traditional methods for exchanging information and data relating to such incidents.

Recommendations

- The Bank of Algeria and all financial intermediaries should organise awareness campaigns highlighting the dangers of issuing cheques without sufficient funds. Preventing such conduct is far more effective than addressing it through established legal procedures after the offence has occurred.

- The Algerian legislature should be encouraged to modernise the banking system and establish an integrated information system connecting all financial intermediaries, including the Public Treasury and the financial services of Algérie Poste. This would accelerate banking operations and facilitate the exchange of information, particularly data relating to payment incidents.

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