

## Compare Checks and Bills in Iran

### Abstract

*At the time of issuance of the check, the issuer must have cash or usable cash in equivalent against the counterparty, while in such cases you do not see such a situation, but the issuer can later provide its place with the counterparty.*

*You may be paid a voucher from sight and a voucher from the date, but in the case of a check such a right is not given to the issuer and the voucher cannot have the characteristics prescribed by law and according to paragraph 13 of Article 13 of the Code of Criminal Procedure. If it is proved that the check was issued without a date or that the actual date of issue of the check precedes the date stated in the text of the check, that check is not criminally prosecutable according to the law.*

*If it is not paid to you on time, the holder can only collect the money through the provisions of the Civil Code, while in the case of a check, the holder can prosecute the issuer both civilly and through criminal and executive action.*

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### Introduction

The holder of the debt must demand the day of the promise of your money and according to Article 280 of the Penal Code, "Refusal to pay your money must be notified within ten days from the date of the promise by a letter called objection of non-payment" and according to Article 286 of the same law if The holder of a bill that must be paid in Iran and wants to use the right provided for him in Article 249 due to non-payment of the protest must file a lawsuit within one year from the date of the protest and according to Article 287: Foreign lawsuits must be filed against the issuer or endorsers residing in Iran within 2 years from the date of the objection. Will not be accepted. According to the provisions of the second part of Article 314 of the Constitution, all the above-mentioned provisions regarding checks are also observed. Finally, the difference with you is that the period for requesting a check is 15 days from the date of issue, and 45 days if the amount must be paid outside the place of issue.

#### **Ways to share checks and bills:**

- 1. Date of issue:** *The date of issue must be stated in the check.*
- 2. Amount:** *Although the amount in the check is not mentioned in the commercial law, according to the said definition, the issuer reimburses all or part of the funds with the bank or transfers them to another. The amount of money in the check is part of the formal conditions and is one of the pillars of its accuracy.*
- 3. Date:** *The date is one of the conditions for issuing checks and bills and according to Articles 225 and 311 of the Constitution. It is considered necessary for both of these documents.*
- 4. According to Article 224 of the Penal Code.** *The provisions relating to the issuer's warranty, endorsement, objection, filing of surety, and guarantee and loss concerning you will also include a check.*

**5. According to Article 292 of the Constitution.** *After filing a lawsuit, the court is obliged to withhold the equivalent of your money from the property of the plaintiff as security as soon as the request of the holder of the bill, which has been objected due to non-payment, and because according to the last part of Article 314 of the Penal Code, ... will also be included in the check, so the holder of the check can apply the provisions of Article 292 exactly.*

#### **Comparison of checks and promissory notes:**

##### **Ways to differentiate between checks and promissory notes:**

The main difference between the two documents is the legal guarantees that the legislator has provided for each of them, which means that if a promissory note is requested, the obligor can only collect the promissory note legally. In the case of criminal and administrative checks, it has been predicted to receive it, which has increased its application. Another difference between the two is that the check is legally visible and should not be promising if the promissory note can be promising.

##### **Directions for sharing checks and promissory notes:**

- 1. Amount:** *The amount must be included in the check and promissory note.*
- 2. If the promissory note is in the form of a carrier or a remittance,** *there are three people in it, in which case it will be like a check in terms of the people involved in it.*
- 3. If the promissory note is on-demand because it can be paid visually,** *it will have the characteristics of a check.*
- 4. The provisions of Article 309 of the Penal Code,** *which deals with the issuer's guarantee and endorsers, and the objection and filing of a guaranteed lawsuit and your disappearance in accordance with Article 314 of the Penal Code, are applicable to both the check and the promissory note.*

### ***Legal nature of the check:***

Regarding the nature and legal basis of the check, jurists do not agree with each other, some consider it as a contract and others as a unilateral obligation of the issuer, and some have tried to justify and explain the legal nature of the check by combining the two views .

#### ***Contract theory***

Some people believe that the arrangement of a check creates a kind of contract or agreement between the parties and its issuance is a positive contract, meaning that just as the issuer of the check is obliged to pay the check, his party is mutually obligated. Performs work or action in return for that obligation, which is called the reason for issuing the check. According to this theory, in any transaction that creates an obligation for the parties, the cause of the obligation is the obligation of the other party, as if the seller's obligation to deliver the sale is the same as the customer's obligation to pay the price. If the reason for the customer's obligation to pay the price is the same as the seller's obligation to deliver the goods, then if one of the parties is not able to fulfill his obligation promptly without fault on the part of the other party and without fault on his part, the other party is lost and is exempted from fulfilling its obligation, if in a prying sale the owner of the transaction does not enforce it or the seller becomes entitled and the seller is unable to deliver the sale due to lack of power to deliver the sale or by mistake in the subject of the transaction.

#### ***Commitment theory***

Some believe that by issuing a check, the issuer unilaterally commits itself to pay the check. According to this theory, the signatory and all subsequent endorsers are committed to the holder to pay the check upon request. Therefore, before the creditor is known in principle and as a result, before the intention and consent of the creditor are obtained, each signatory is considered indebted and, naturally, this obligation is absolute and unconditional, because if the expression of the will of the signatories is in writing And as soon as the writing is put into circulation, the creator of the document will not be able to withdraw his expression of will, and if the expression of the issuer's will did not contain his obligation to pay the document on time, the trust of third parties and security and business relations would be severely endangered.

#### ***Combined or eclectic theory***

Some other jurists have tried to explain and justify the nature of the check by combining the above two views. These people separate the two stages. Signing stage and check issuance stage.

#### ***Check signature stage***

The signing of the check by the debtor is an indication of the agreement of the will of the parties, which cannot be applied

to anything other than the contract because it establishes a legal bond between them.

#### ***Check issuance stage***

The debtor is unilaterally obligated to all subsequent holders by issuing a check. As a result, these scholars justify the existing relationship between the debtor and the original recipient by contract and justify the relationship with the subsequent holders with the theory of unilateral obligation.

#### ***Transitional theory***

The transfer theory is based on the premise that the issuer of a check, by transferring it to the holder, also transfers his rights to the extent stated in the check. In other words, the check transfer is done simultaneously with the transfer request. The transfer is done in two ways.

1. Forced transfer: Due to the death of the creditor, his right is forcibly transferred to his heirs.

2. Voluntary transfer: is a transfer in which a person freely transfers his rights or claims to another, whether in return or exchange. In both cases, the transfer is the successor of the transferor, and the rights owned by the creditor to the creditor are transferred to him. The debtor has no interference in the transfer and may be obtained without his consent, and therefore the signatory cannot order the non-payment of the check on the pretext that he intended to give power of attorney to the holder to receive the money in his place.

#### ***Theory of the transmission of religion***

According to this view, the check is the transfer of religion. This means that the issuer, who considers himself indebted to the recipient, orders him to transfer the debt to the other party. The recipient may hold the document until maturity and collect the money in person and may remove it from its ownership and perform the same action as the issuer initially did. In principle, the transfer of debt may take the form of a guaranteed contract or a remittance. If the transfer of debt is in the form of a guaranteed contract, sometimes the transfer of liability is to liability and sometimes it is an attachment of liability to liability. The receiver should refer to both of them. If the transfer of debt is in the form of remittance, the recipient must pay the remittance to the creditor (reciprocity) after the remittance in case of acceptance.

#### ***Advocacy theory in payment***

Proponents of her case have been working to make the actual transcript of this statement available online. To the check holder. This view has been accepted by some French courts, and opinions have been issued on the acceptance of the theory of advocacy.

#### ***The check constitutes a condition in favor of a third party***

According to this theory, during the opening of the account, a contract is concluded between the account holder and the banker, which guarantees the existence of a condition in favor of a third party, which has also been challenged and argued:

That the banker has asked to be pledged directly to him, but if we consider the real intention of the parties to the contract, we cannot accept that the banker, by delivering a check to the customer, pledges his demand to the unknown holders of various checks. According to the banker, the main person in the transaction is the customer who has taken over the cashier and he intends to receive his orders and settle the account only with him.

### ***The check became a tool***

Among those who support this theory is the French Booster, who explains: "In the face of all this futile effort, we have concluded that the subject of the search for the legal nature of the Czech Republic is like the circle of a square, *so we ask ourselves. "We have made a mistake, and does the check not in fact have its own legal nature"?*

Considering the opinions and ideas mentioned above and considering the independent position and role that the check plays in the economic and commercial life of the people, it can be concluded that the check does not comply with the legal institutions described above and is only an order. Payment cannot be anything else.

Now, considering that the check is considered a means of payment from the public point of view, the problem is that if, for example, the buyer in the contract of sale delivers the price of the transaction in the form of a check, by doing so, his obligation Will the price be waived or not?

The plaintiff must pay the debt, which is the same as arrears. The plaintiffs also presented 6 checks to the court and added that after evicting the same tenant, he received these checks for arrears .The demand for arrears of rent has become a demand arising from the commercial document with the issuance of the said checks, and even if we consider the guarantee under the lease contract as a guaranteed contract, the obligation of the guarantor will expire with the issuance of checks signed by Suleiman. "The landlord has pledged to pay the debt. This conversion of the pledge into credit has taken place, and therefore the defendant, in this case, is no longer considered liable until the lawsuit is heard on his behalf.

The French legislature has rejected this view and believes that by handing over the check, the former holder's claim will remain with all its guarantees. Thus, under French law, the delivery of a check does not constitute payment, but rather adds to the holder's guarantees. Iranian law is not so explicit in this regard, but it is clear that the delivery of a check for payment is not a payment in the legal sense of the word; That is, it does not cause the issuer to lose the obligation arising from the original contract. Therefore, the delivery of the check does not cause the fall of the old obligation and the creation of a new obligation in favor of the obligor. For this reason, if the original transaction contains a guarantee in

favor of the check holder, the issuance of the check and its delivery does not negate the guarantee of the guarantor of the said transaction. Meanwhile, if the debtor (obligor) wants to pay his debt or fulfillment of a financial obligation by employing a commercial document (check), the creditor is not required to accept this means of payment, and civil law professors believe that " "If it is a payment, it must be accepted as a means of payment".

For example, in the text of the check, it is stipulated that the receipt of the check is conditional or conditional on the holder of the title deed naming the seller. Or subject to anything else. Join us to explain the rules and provisions of conditional checks.

Sometimes what is stated in the text of the check is not a condition and the reason for issuing the check is written and written, there is no problem here and that text should not be considered a condition.

### ***How do we know what is stated in the text of the check?***

#### ***Conditional check cannot be prosecuted?***

We know that in some cases, if the check has certain characteristics, one of the ways to receive the check will be deleted, and that check is conditional, and the criminal complaint will be deleted. Promising checks and signed white checks, guarantee checks and are not subject to criminal charges.

Conditional checks have other items that are mentioned below.

#### ***Receipt of conditional check at the bank***

The conditional check has another feature, but this time it is in the interest of the holder and that is that if the check goes to the bank on a certain date and due date, the bank has nothing to do with the condition and ۛ and if there is balance in the account, pay he does.

So here the check does not fulfill the condition and... and only must pay. But the same check, if accompanied by a lack of inventory, has other effects that we will address.

#### ***Direct execution for conditional checks***

Suppose your unconditional check is not received from your bank as a jack holder, you are legally protected. This advantage is not stipulated in the new law for issuing checks for conditional checks, which means that if your check is conditional, you cannot enjoy the advantage of the new law, which is direct enforcement.

The only way to file a lawsuit is for the court to rule in your favor when the condition is met, such as "submitting a document or surrendering" and so on.

#### ***Conditional checks cannot be claimed from the registry office***

Other cases and effects of a conditional check are that, except that it cannot be claimed through a criminal complaint, it can also be claimed through the direct executive and the registry

office, as mentioned in the previous paragraph; Therefore, although the bank does not check the check and pays the check, if it is not received, the only way for the check holder to file a check is to file a lawsuit, which will be heard in the Dispute Resolution Council or court, depending on the amount of the check.

In this way, if it is up to 20 million Tomans, a lawsuit should be filed in the Dispute Resolution Council, and if it is more than this amount, a lawsuit should be filed in court.

A conditional check, as we have seen, has certain provisions and effects and does not have most of the advantages of a check, especially it does not have the best advantage, which is direct enforcement through the court.

A conditional check is a check whose payment is subject to the fulfillment of a condition or condition, i.e. the check will not be paid until that condition is met.

***The recent law on issuing checks in Iranian commercial law is as follows:***

***Amended Check Issuance Law***

***Check issuance law approved on 1355/4/16***

***With the amendments approved on 11/8/1372***

***And amendments approved on 2/2/2003***

***And new amendments approved on 08/13/1397***

***Article 1***

Types of checks are:

1. Ordinary check is a check that is issued by the responsible persons of the banks to their current account and its holder has no guarantee other than the credit of the issuer.

2. A confirmed check is a check that is issued by the persons in charge of the banks to their current account and is approved by the bank against the payment.

3. Guaranteed check is a check that is issued by the bank to the same bank at the request of the customer and its payment is guaranteed by the bank.

4. A traveler's check is a check issued by a bank and its amount is paid in each of the branches of that bank or by its representatives and brokers.

The holder of the check is the person in whose name the check was issued or in whose name it is endorsed or the bearer of the check (in the case of checks in the bearer's name) or their legal representative.

Article 3 repeated

The check can be received from the bank only on the date stated on it or after that date.

If the check is not paid due to the reasons mentioned in Article (2), the bank is obliged to immediately register the non-payment ability of the check-in the integrated system of the Central Bank upon receiving the tracking code and entering it in the certificate containing the check details. The full identity and address of the issuer must be mentioned in it, the reason or reasons for non-payment must be clearly stated

and it must be signed, stamped, and submitted to the applicant. A certificate without a tracking code and the seal of a legal entity will not be processed by the judicial and registration authorities.

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After twenty-four hours, all banks and credit institutions, as the case may be, are obliged to apply the following measures to the account holder when removing the bad effect from the check:

A- Failure to open an account and issue a new bank card;

B- Freezing the funds of all bank accounts and cards and any amount belonging to the issuer that has any credit with the bank or institution in the amount of the check amount deficit in the order announced by the Central Bank;

C- Failure to pay any bank facilities or issuance of a foreign currency or Rial guarantees;

D- Failure to open foreign currency or Rial documentary credit.

Note 2: If the check is issued on behalf of the account holder, whether a natural or legal person, the actions subject to this Article shall apply to the lawyer or representative in addition to the account holder unless he proves in a competent judicial authority that Documentary payment is the action of the account holder or his lawyer or subsequent representative.

Note 3: In any of the following cases, the bank is obliged to announce the level in the integrated system of the Central Bank to immediately and online deactivate the check:

A- Deposit the deficit of the check amount to the current account with the bank and submit a blocked request in which case the bank is obliged to block the said amount until the time of the check holder and for a maximum of one year, within three days to deposit the amount reliably and can be cited to inform the check holder.

B- Presenting the check carcass to the impossible bank;

C- Submitting an official consent (arranged in the notary public office of the check holder or an official letter from a governmental or public non-governmental legal entity holding the check;

D) Submitting an official letter from the competent judicial or registration authority regarding the completion of the executive operations regarding the check;

E- Submitting a court ruling on the acquittal of the account holder regarding the check;

F- Three years have elapsed from the date of issuance of the certificate of non-payment, provided that the holder does not file a legal or criminal lawsuit regarding the check.

Note 4: If the issuance of the non-payment certificate is due to the non-payment order in accordance with Article (14) of this law and its notes, it will not be considered a misdemeanor.

The criteria of this article, including the conditions for receiving the check, the method of calculating the credit limit, and the items in the check sheet, such as the identity of the account holder, are in accordance with the instructions prepared by the Central Bank within one year after the implementation of this law and approved by the Monetary and Credit Council.

If after the issuance of the final verdict the plaintiff passes or the convict in the above order provides payment of the check and damages for delay in payment and other damages stated in the verdict, the execution of the verdict is suspended and the convict is only required to pay an amount equal to one third. A fine will be imposed in favor of the government by order of the prosecutor.

#### Article

In the following cases, the issuer of the check cannot be prosecuted.

A- If it is proved that a blank check has been signed.

B- If in the text of the check, the receipt of the amount is subject to the fulfillment of a condition.

C- If it is stated in the text of the check that the check is for guaranteeing the execution of a transaction or an obligation.

D) Whenever it is proved without any condition in the text of the check that the receipt of the amount is subject to the fulfillment of a condition or the check is to guarantee the execution of a transaction or an obligation.

E- If it is proved that the check was issued without a date or the actual date of issuance of the check is before the date stated in the text of the check.

#### Article

If the check is issued on behalf of the account holder, whether a natural or legal person, the check issuer and the account holder, whether a natural or legal person, the check issuer and the account holder are jointly responsible for the payment of the check and the executive And the judgment of damages is issued based on solidarity against both. In addition, the signatory of the check will be criminally liable under the provisions of this law unless he proves that the non-payment is documented by the account holder or his lawyer or subsequent representative, in which case the person who caused the non-payment will be criminally liable.

A- In the text of the check, the receipt of the amount is not subject to the fulfillment of a condition;

B- It is not stated in the text of the check that the check is for guaranteeing a transaction or an obligation;

C- The non-payment certificate has not been issued due to the non-payment order according to Article (16) of this law and its notes.

case, with the receipt of appropriate security, it will issue an order to suspend the executive operation. If the reason given

is documented in an official document or if the issuer or legal representative claims that the check was lost and the judicial authority finds the reasons presented acceptable, the execution will be suspended without obtaining security. These claims will be heard out of turn. (Amended in 2019)

#### **Conclusion:**

A check is a business document written on a special sheet. The reason the legislature decided to define checks was that checks became an alternative to cash and a means of replacing cash payments so that people could use them instead of money in their day-to-day transactions. A check should have been issued when the issuer had as much money in his account as the amount of the check, and instead of receiving money from the bank and paying it to another, he issued the check.

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