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The cheque law

<https://hdl.handle.net/2144/29862>

Boston University

March 10, 1996

THE CHEQUE LAW

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PART ONE GENERAL PROVISIONS

CHAPTER ONE. GENERAL PROVISIONS

1. Objectives. This law defines the rights, powers, privileges, duties and liabilities of the parties to a cheque.

2. Principles of Construction.¹

A court shall construe this law:

- a. to maximize the opportunities for the parties to a cheque accurately to predict the legal consequences of their actions with respect to the cheque;² and
- b. to improve the system for the payment for goods and services in the Lao P.D.R. by making payment more certain, quick and secure.³

PART TWO

THE RELATIONSHIP BETWEEN BANK AND THE DEPOSITOR-DRAWER

CHAPTER TWO. THE ACCOUNT OF THE DRAWER

3. Definitions: 'bank', 'drawer' and 'drawee'.¹

¹ The usual 'general principles' clauses add nothing to a bill; if they has a purpose, they can serve as a useful guide courts and officials in interpreting the statutory language.

² Legal certainty traditionally serves as a principal objective to a cheque law. Businessmen have enough difficulty in predicting how markets will behave; they ought to have as much certainty as possible about how stgate officials will interpret their actions. This bill aims to achieve thatg objective.

³ A general provisions section has the function of guiding the interpretation of the statute.

In this law --

- a. "bank" means a person or organization carrying on the business of banking;
- b. "drawer" means the person who on the face of the cheque orders a bank to pay on a cheque;
- c. "drawee" means the bank whom the drawer orders to pay on a cheque.

4. Establishing the drawer's account.

(1) A depositor and a bank may by agreement of deposit establish a checking account for the depositor at the bank.

(2) A bank may not unreasonably withhold agreement with a prospective depositor to establish a checking account.⁵

(3) The depositor shall keep on file with the bank a current copy of his signature, and of others that the depositor authorizes to sign checks on the account.

5. The relationship between depositor and bank.

(1) The relationship between depositor and bank shall consist of a debtor-creditor relationship. A depositor has no property in the monies credited to the depositor's account.⁶

(2) The bank shall owe a fiduciary duty to the depositor.⁷
The Central Bank shall by rule establish the minimum terms of the agreement of deposit, and shall ensure that the agreement

⁴ This draft adopts the strategy of introducing definitions at the appropriate place in the draft. A general definition section appears at the end of the draft, serving as a glossary of its terms.

⁵ In a country like the Lao P.D.R., with relatively few banks, withholding checking privileges can easily mean that a person cannot carry on business in the modern sector. A bank may not prevent the establishment of a checking account without good reason.

⁶ That is, in the event of a bankruptcy by the Bank, the depositor takes as a general creditor, not as a secured creditor.

⁷ Because the bank invariably is in a position to protect the depositor, rather than vice versa, the bank should owe a duty of disclosure and transparency to the depositor -- i.e., a fiduciary duty. This conforms to most modern banking law. See, e.g.,

does not overreach in favor of the bank, and establish the terms of the fiduciary duty of the bank.

(3) A cheque does not constitute an assignment of funds held by the bank to the depositor's account, nor does it establish any property in the drawer's account in favor of the payee.⁸

6. Charges on the account

(1) A bank may charge the account of a depositor pursuant to the terms of the agreement of deposit.

(2) Except as set forth in subsection (3), a bank shall --

(a) pay to a regular holder of a cheque the amount that a drawer by cheque orders the bank to pay, and

(b) charge the drawer's account the amount so paid.

(3) The bank's obligation prescribed by subsection (2) applies to checks drawn before the drawer depositor's death or judicial declaration of incompetence.¹

(4) Notwithstanding subsection (2), if the account of a drawer of a cheque presented to a bank for payment does not have currently sufficient funds to cover the amount required to pay the cheque, the bank may --

(a) refuse to pay the holder of the cheque, or

(b) pay the amount that by the cheque the drawer ordered it to pay, and charge the account of the drawer for that amount.¹⁰

(5) Notwithstanding subsection (2), a bank --

⁸ That is, the relationship is not that of bailor and bailee, or trustee and beneficiary. The principal consequence of this rule is that if the bank becomes bankrupt, the payee of the check has no priority in the assets of the bank.

⁹ This rule conforms to the U.S. Uniform Commercial Code, but contradicts that of some other laws. See, e.g., the Harvard/World Bank Draft, Article

¹⁰ That is, the bank may pay the cheque as an overdraft. In some country's banking practices (for example, Great Britain) overdrafts are paid as of course; overdraft facilities become the most frequent form of bank credit; in others, they are all but unknown (for example, the U.S.).

(a) need not pay any sums to the holder of a cheque drawn payable in a currency other than the currency in which the account is denominated; but

(b) if it does pay the holder of the cheque the amount of the cheque in either the currency stipulated in the cheque or in the currency in which the account is denominated, it may charge the account of the drawer depositor for that amount.

(6) A bank --

(a) need not pay any sums to the holder of a cheque that has been --

i. forged,

ii. altered without the authority of the drawer, or

iii. drawn by an agent in excess of the authority granted the agent by the agent's principal; and

(b) if it does pay on such a cheque, may not charge the drawer's or purported drawer's account.

7. Stop payment orders

(1) The drawer of a cheque may by oral or written notice to the drawee bank direct the drawee bank not to pay a cheque that it has not yet paid.

(2) A direction pursuant to subsection (1) shall specify the cheque ordered stopped by number, payee name, amount and date.

(3) An oral direction not confirmed by a written order shall bind the drawee bank for fourteen days after receipt of the oral instruction.

(4) If delivered to the drawee bank after the drawee has certified a cheque, a stop payment order has no effect.

(5) A customer cannot order a bank to stop payment on a bank cheque.

(6) The purchaser of a postal money order cannot order the post office to stop payment on a postal money order.

(7) A drawee bank that pays a cheque in violation of a valid stop payment order may not charge the drawer's account for the amount paid.

(8) If an order does not contain all the information required by subsection (2), a drawee bank that pays the cheque in violation of the stop payment order may charge the drawer's account only if the bank was not negligent in making the payment.

PART THREE

CHEQUES

CHAPTER THREE. DRAWING CHEQUES

8. Definitions

In this Act --

- (a) "payee" means the person in whose favor the drawer directs the drawee bank to make payment;
- (b) "money" or "currency" includes a monetary unit of account that a governmental organization establishes, even if that institution intends that only the governmental organization may transfer it on its own records, and between it and persons designated by it or between those persons;
- (c) "signature" includes a signature by stamp, symbol, facsimile, perforation or other mechanical means.¹¹

9. What counts as a cheque

(1) A cheque is a written instrument with the following characteristics:

¹¹ A Central Bank regulation now requires that the signature must be handwritten. The present proposal would change that rule.

(a) If drawn on a local bank, it is drawn on a printed form that the Central Bank by rule prescribes.

(b) It has all the blanks in the printed form completed, including --

i. an unconditional order by the drawer to a bank;

ii. the order requires the bank to pay a definite sum to the payee's order;

iii. the date; and

iv. the drawer's signature.

(2) Notwithstanding the provisions of subsection (1), an instrument that otherwise meets the requirements of subsection (1) constitutes a cheque:¹

(a) if the instrument states that the bank will pay the cheque according to a rate of exchange indicated on the cheque or determined as directed on the cheque;

(b) if the drawer draws the instrument --

i. if the drawer is a bank, as an order directed to itself,

ii. payable to the drawer or to the drawer's order, or

iii. payable to two or more payees;

(c) if the instrument has two or more drawers;

¹² This section includes a number of cases in which it is arguable that the cheque as drawn does not meet the definition of 'cheque', and resolves that indeterminacy.

(d) if the drawer draws the instrument on a bank in which the drawer has insufficient funds for its payment;

(e) if the instrument bears a date other than the date on which the drawer actually drew the instrument; or

(f) if the instrument orders the bank to pay a definite sum with interest.

(3) A stipulation on a cheque ordering the bank to pay --

(a) a definite sum with interest,

(b) at a definite time,

(c) on demand, at sight or on presentment, or words of similar import

has the same legal consequences as an order to the bank to pay the definite sum without interest, and without a stipulation as to time of payment.

(4) If a discrepancy exists between the amount of the cheque expressed in words and the amount expressed in figures, the amount of the cheque is the amount expressed in words.

10. Completion of incomplete checks

(1) The holder of an incomplete cheque that satisfies the requirements of subparagraphs (1) (a) and (1) (b) (i) and (1) (b) (iv) of Article 9, but which lacks other elements pertaining to one or more of the requirements set out in Article 9 may complete the cheque.

(2) A cheque completed pursuant to subsection (1) constitutes a cheque within the meaning of Article 9.

(3) If pursuant to subsection (1) a holder completes a cheque otherwise than in accordance with an agreement entered upon --

(a) a party who signed the check before the completion may invoke the non-observance of the agreement as a

defence against a holder, provided the holder had knowledge of the non-observance of the agreement when becoming a holder; and

- (b) a party who signed the cheque after the completion is liable according to the terms of the cheque so completed.

11. Signature

(1) A drawee bank need not pay on a cheque the signature on which does not conform to the depositor's signature on the signature card on file with the bank.

(2) If the signature card on file with the bank for an organization requires more than one signature, if a necessary signature does not appear, the organization has not signed the check.

12. Signature by an agent

(1) A drawer may sign a cheque by an agent who indicates the agent's representative capacity on the face of the cheque.

(2) A person who signs a cheque as an agent under the following circumstances imposes liability upon the agent's principal, and not upon the person actually signing the cheque:

- (a) If, with the principal's authority, the person

- i. signs the cheque in the agent's own name, and
- ii. shows on the face of the cheque that the person signed in a representative capacity for that named principal,

or

- (b) if, with the principal's authority, the person signs the cheque in the name of the principal.

(3). A person signing a cheque under the following circumstances imposes liability upon himself, and not the person for whom the person signing the cheque purports to act as agent:

(a) If the person signs the check as an agent, but either --

i. lacks authority to sign,

or

ii. exceeds the agent's authority to sign,

or

(b) if the person signs the check as an agent for another, and who has authority to sign as agent for that other, but either --

i. fails to show on the cheque that the person signs in a representative capacity, or

ii. shows on the cheque that he signs in representative capacity, but does not name the person the agent represents.

CHAPTER SIX. CERTIFIED CHEQUES AND BANK CHEQUES

13. Definition of 'certified cheque' and 'bank cheque'

(1) A certified cheque consists of a cheque upon which the drawee bank has endorsed the word "certified" followed by a signature of a responsible officer of the bank.

(2) A bank cheque is a cheque drawn by a bank on itself in favour of a named payee.

14. Certified Cheques and Bank Cheques

(1) On request by a depositor of the bank, who at the time of the request has funds on deposit in the bank sufficient to pay a cheque that the depositor presents to the bank for certification, and for a reasonable fee not to exceed the actual cost to the bank for endorsing a cheque as certified, plus 25% of

that cost, a bank shall forthwith endorse that cheque as certified.

(2) A bank shall be liable upon a cheque that it has certified for the face value of the cheque as though it were the drawer of the check.

(3) After certification of a cheque, and prior to payment, a bank shall hold an amount equal to the face amount of the cheque for the purpose of paying that cheque, and shall debit the account of the drawer to that amount.

(4) On request, and after receiving from a person a sum equal to the face of the requested bank cheque and a fee not to exceed the reasonable cost of making a bank cheque and its accompanying bookkeeping, plus 25% of that cost, a bank shall draw a cheque on itself to the order of a person named by the person purchasing the bank cheque, and deliver it to the purchaser.

PART FOUR

NEGOTIATION, TRANSFER, INDORSEMENT, PRESENTMENT AND PAYMENT

CHAPTER FOUR. TRANSFER

15. Non-negotiable cheques

(1) When --

- (a) a cheque bears the printed words 'non-negotiable' or 'non-transferable' or 'not to order', or
- (b) the drawer has written those or similar words on the face of a cheque, or
- (c) an endorser in his endorsement has written those or similar words in his endorsement,

the transferee does not become a holder of the cheque except for purposes of collection.

- (2) If drawn on a Lao bank, the printed form cheque shall bear on its face the printed words, 'non-negotiable'.

16. Transfer of a cheque

- (1) A person may transfer a cheque --
- (a) by endorsing and delivering the cheque to the endorsee; or
 - (b) if it is drawn payable to bearer or to 'cash', or if the last endorser endorsed in blank, by mere delivery of the cheque.

(2) To count as an endorsement, the endorser shall write the endorsement on the cheque or a slip affixed to the cheque (the 'allonge'). The endorser shall sign the endorsement.

- (3) An endorser may endorse --
- (a) in blank, that is, by a signature alone, or by a signature accompanied by a statement to the effect that the drawee ought to pay the cheque to a person in possession of it; or
 - (b) specially, by a signature accompanied by an indication of the person to whom the drawee ought to pay the cheque.

(4) A person may transfer a cheque in accordance with this article after expiration of the period of time for presentment.

(5) [Here copy Art. 21(1) of the Harvard Draft].

(6) [Here copy Art. 21(2) of the Harvard Draft].

17. The holder of a cheque

- (1) A person is a holder if he is:
- (a) in possession of a cheque drawn payable to bearer; or

(b) the payee in possession of the cheque; or

(c) in possession of a cheque that the last endorser has endorsed to him, or on which the last endorser endorsed in blank, and on which there appears an uninterrupted series of endorsements, even if an endorsement was forged or signed by an agent without authority.

(2) When an endorsement in blank is followed by another endorsement, the person who signed the last endorsement is deemed to be an endorsee by the endorsement in blank.

(3) A person may become a holder notwithstanding that the person obtained the cheque under circumstances, including incapacity or fraud, duress, or mistake of any kind, that would give rise to a claim or a defence upon the cheque.

(4) [Here copy art. 15 of the Harvard Draft].

18. Endorsements.

[Here copy Arts. 17, 18, 19, 20 and 23 of the Harvard Draft]

CHAPTER FIVE. PRESENTMENT, DISHONOR BY NON-PAYMENT, AND RECOURSE

19. Presentment for payment and dishonor by non-payment

[Here copy Arts. 41, 42, 43, 44, and 45 of the Harvard Draft].

20. Recourse

(1) A bank that refuses payment of a cheque shall so declare in writing on the cheque. If the dishonor is on grounds of insufficient funds, the bank shall so declare on the cheque. The declaration shall be signed by an officer of the bank.

(2) Proof that an officer of the drawee bank signed a statement on a check that it refused payment shall constitute proof in any court of the fact stated.

(3) [Here copy Arts 51, 52, 53 (omitting references to protest) 54 and 55 of the Harvard Draft]

21. Amount Payable

[Here copy Arts. 56, 57, and 58 of the Harvard Draft].

CHAPTER SIX. DISCHARGE

22. Discharge by Payment

[Here copy Arts 59, 60, 61, 62, 63 of the Harvard Draft]

23. Discharge of a Prior Party

[Here copy Art. 64 of the Harvard Draft]

CHAPTER SEVEN. RIGHTS AND LIABILITIES OF PARTIES TO A CHEQUE

24. Rights of a Holder

[Here copy Arts. 24, 25, 26, 27, and 28 of the Harvard Draft]

25. Liabilities arising out of a signature on a cheque

[Here copy Arts. 29, 30, 31 of the Harvard Draft]

26. The drawer's liabilities

[Here copy Art. 35 of the Harvard Draft]

27. The endorser's liabilities

[Here copy Arts. 36 and 37 of the Harvard Draft. Copy Art. 38, omitting all references to 'aval' or 'good as aval' in subsection (3).]

PART FIVE
MISCELLANEOUS

CHAPTER NINE. LOST CHEQUES

28. Lost Cheques

[Here copy Arts. 70, 71, 72, 73, 74, and 75 of the Harvard Draft].

CHAPTER TEN. POST OFFICE MONEY ORDERS

29. Post Office Money Orders

(1) On request, and after receiving from a person a sum equal to the face of the requested Post Office Money Order and a fee not to exceed the reasonable cost of making a bank cheque and its accompanying bookkeeping, plus 25% of that cost, a responsible local post office official shall draw a cheque ordering a post office located anywhere in the Lao P.D.R. to pay to the order of a person named by the person purchasing the bank cheque, and deliver it to the purchaser.

(2) A Post Office Money Order shall have printed on it the words, 'Non-negotiable'.

(3) On presentment for payment, a post office anywhere in the Lao P.D.R. shall pay the payee of a Post Office Money Order its face amount of the money order.

CHAPTER ELEVEN. IMPLEMENTATION

30. The meaning of 'knowledge'

In this Act, a person has knowledge of a fact if that person has actual knowledge of that fact or if a reasonable person with the physical characteristics of the person and in the person's circumstances would have had actual knowledge of the fact.

31. Actions at law

(1) A person claiming to have a cause of action arising out of the provisions of this Act may enforce that right in a forum authorized by law.

(2) In an action at law amount by a holder of a cheque against its drawer dishonored by non-payment and endorsed by the bank that it has not paid the cheque on account of insufficient funds, the holder may obtain judgment as follows:

- (a) The holder shall make a complaint to the clerk of a court with jurisdiction in a form prescribed by the Minister of Justice, stating the name and address of the drawer of the cheque, the amount of the cheque, the time and place of presentment for payment, and

that the drawee did not make payment on the check, and shall verify the complaint under pains of perjury.

(b) The clerk of the court shall forthwith cause that the drawer of the cheque be served personally with a copy of the complaint, or, if the drawer cannot be found, by substituted service.

(c) Within five working days after completion of service, the drawer may under the pains of perjury file a verified answer to the complaint, specifying the ground on which the drawer asserts a defence against the complaint.

(d) If pursuant to subsection (d) the drawer does not file with the Clerk a timely answer, the Clerk shall issue judgment for the face amount of the check, interest and costs.

(e) If within five working days of the completed service of the complaint the drawer does file with the Clerk a verified answer, the Clerk shall place the case on the docket for trial.

32. Criminal penalties

(1) A person who knowingly draws a check without having already to the drawer's account in the bank upon which the drawer draws the cheque, commits the crime of fraudulent uttering a cheque.

(2) A person who commits the crime of fraudulently uttering a cheque shall suffer a penalty of xx years in prison.

CHAPTER TWELVE. RULES

33. Rule-Making by the Central Bank of the Lao P.D.R.

(1) The Central Bank ('Bank') may from time to time promulgate rules to carry out the purposes of this law.

(2) Before adopting a rule, the Bank shall publish its draft in a newspaper of general circulation in the Lao P.D.R., together with a detailed statement of the grounds on which the Bank rests the proposed rule, and a notice inviting public comment. The Bank shall receive comments from the public for three months from the date of publication of the notice.

(3) The Bank shall carefully consider each written comment received, and shall revise the draft rule as it deems advisable.

(4) The Bank shall adopt its final version of the rule, and publish it together with a statement summarizing each comment received, and the reasons for accepting or rejecting the comment in whole or in part.

CHAPTER THIRTEEN. MONITORING AND EVALUATION

34. Monitoring and Evaluation

(1) The Bank shall carefully monitor the effects of this law on the Lao payments system as used by foreign private capital, large, medium-sized and small Lao businesses in the formal sector, Lao businesses in the informal sector, and rural inhabitants.

(2) In its annual reports, the Bank shall specially evaluate the Lao payments system as it affects the groups mentioned in subsection (1), and make recommendations for its improvement.

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