



Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan

الضمانات التنفيذية لإصدار الشيك بدون رصيد في النظام القانوني في أفغانستان

- Kambiz Rahmani¹
- Department of Private law, Faculty of Law and Political Science.
- Herat University, Herat, Afghanistan.
- e-mail: Kambiz34rahmani@gmail.com

• Received: 24/03/2026 Accepted: 03/06/2026 Published: 20/06/2026

Abstract

A cheque is one of the most important commercial documents in and business transactions, and its credibility relies on effective and efficient enforcement guarantees to prevent the issuance of dishonored cheques. A dishonored cheque is one that a bank refuses to pay due to insufficient funds, account restrictions, or other obstacles. This study aims to clarify the concept of a dishonored cheque and examine the enforcement guarantees under the Afghan legal system. Using a descriptive-analytical approach and conducting interviews with commercial courts and multiple banks in Herat, the study finds that despite the provisions of the Penal Code, Commercial Law, and the Law on Transactions Documents, no specific or fully effective enforcement mechanism has yet been established to prevent dishonored cheques. Key challenges include weaknesses in the banking system, the absence of an independent law regulating cheques, ineffective enforcement procedures, lengthy litigation processes for cheque claims, and frequent reliance on traditional financial transaction methods. An analysis of existing legal regulations and current banking practices demonstrates that reforming and updating laws, clearly defining civil and criminal enforcement guarantees, and strengthening the banking infrastructure are essential to ensure the credibility and legal validity of cheques within Afghanistan's economic, commercial, and legal framework.

Keywords: Commercial documents, cheques, dishonored cheques, enforcement guarantee and Commercial Law.

¹ Kambiz Rahmani

ملخص

الشيك هو أحد أهم المستندات التجارية في المعاملات التجارية، وتعتمد مصداقيته على وجود ضمانات تنفيذية فعّالة وكفؤة لمنع إصدار الشيكات غير القابلة للصرف. يُعرّف الشيك غير القابل للصرف بأنه الشيك الذي ترفض البنك دفع قيمته بسبب نقص الأموال، أو قيود على الحساب، أو عقبات أخرى. تهدف هذه الدراسة إلى توضيح مفهوم الشيك غير القابل للصرف وفحص الضمانات التنفيذية في ظل النظام القانوني الأفغاني. باستخدام المنهج الوصفي-التحليلي وإجراء مقابلات مع المحاكم التجارية وعدد من البنوك في ولاية هرات، توصلت الدراسة إلى أنه على الرغم من أحكام قانون العقوبات، وقانون التجارة، وقانون المستندات التجارية، لم يتم بعد إنشاء آلية تنفيذية محددة أو فعّالة تماماً لمنع الشيكات غير القابلة للصرف. تشمل التحديات الرئيسية ضعف النظام المصرفي، وغياب قانون مستقل ينظم الشيكات، وعدم فعالية إجراءات التنفيذ، وطول مدة التقاضي في دعاوى الشيكات، والاعتماد المتكرر على طرق المعاملات المالية التقليدية. ويظهر تحليل القوانين الحالية والممارسات المصرفية أن إصلاح وتحديث التشريعات، وتوضيح الضمانات التنفيذية المدنية والجنائية، وتعزيز البنية التحتية المصرفية أمر ضروري لضمان مصداقية الشيكات وسريانها القانوني ضمن الإطار الاقتصادي والتجاري والقانوني في أفغانستان.

الكلمات المفتاحية: المستندات التجارية، الشيكات، الشيكات غير القابلة للصرف، الضمان التنفيذي، وقانون التجارة.

1. Introduction

The philosophy of creating and popularizing cheques worldwide, which has led to the ratification of the Geneva Convention with the aim of unifying procedures at the international level and has been followed in the laws of some countries, shows that cheques are used in their primary function as a non-cash payment instrument to facilitate commercial and non-commercial matters based on the agreement of the parties and with the support of the legislator (Abdipourfard, 2019, p53). The importance of cheques as a means of payment in transactions between people is no secret due to their ease of use. For this reason, the legislators of our country and some other countries have taken a special approach to cheques and, among all commercial documents, have given only this document a criminal aspect. The legislator's goal in providing a guarantee of criminal enforcement for cheques was to make cheques a substitute for banknotes and for people to attribute the same credibility to cheques as they do to banknotes (Mir Mohammad Sadeghi, 2011, p338).

What is certain is that if the laws related to checks are not precisely regulated, the philosophy of the existence of this law, which is to prevent the circulation of liquidity in the market, will be ignored. Not only will some people commit crimes by drawing dishonoured cheque, but they will also cause severe damage to the morals of society and, in particular, the good trust of the people; But also, the people's resort to paying with banknotes puts banks under pressure from a shortage of money and forces them to increase their circulating money beyond the level of absorption in production, industrial and commercial units. Resorting to such a method is one of the causes of the fall in the value of money and the reduction of people's purchasing power due to the imbalance between supply and demand. If banks also face a shortage of liquidity relative to the needs of the aforementioned units, then in such a case, stagnation, unemployment and poverty will also grip the people of the country due to disruption in investment (Irfani, 2006, p99).

One of the advantages of cheques that other transactions documents do not have is the criminal aspect of issuing a dishonored cheque. The criminal aspect of issuing a dishonored cheque is mentioned in Article 728 of the 1396 Penal Code as follows: "A person who, with malicious intent, without having any assets, whether cash or credit, issues a cheque to another person, or whose

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

credit is less than the cheque, or who, after issuing a cheque, withdraws all or part of the amount issued on the basis of that cheque from the bank, so that his assets do not suffice for the amount stated in the cheque, or who orders the authority from which he receives the money not to pay the money, or who intentionally writes or signs the cheque in such a way as to prevent the payment of the money, shall be sentenced to short imprisonment" (Mirzaei, 2019, p58).

Undoubtedly, the increase or decrease in dishonored cheques is related to several factors that cannot be sought only in the guarantee of legal execution. Unfavorable macroeconomic conditions, economic recession, inflation, frequent and drastic changes in exchange rates, and the like can contribute to an increase in bounced cheques (Dargahi-Qasemi- Fathollahi, 2020, p28).

The term "issuing a dishonored cheque" refers to issuing a cheque that the bank refuses to pay due to the absence of sufficient funds. The issuer must not issue a cheque for which the account does not hold adequate funds with the bank; a cheque can only be validly issued if the issuer has sufficient funds and credit with the bank. Otherwise, the issuer is liable both civilly and criminally and is subject to legal prosecution. Undoubtedly, the credibility of a cheque in any legal system depends on the existence of an effective and efficient enforcement guarantee against the issuance of dishonored cheques. Without such enforcement, a cheque becomes a worthless document lacking any economic or commercial function. This study, using a descriptive-analytical method and interviews with commercial courts and banks in the city of Herat, examines the enforcement guarantees for issuing dishonored cheques within the legal system of Afghanistan. The findings indicate that the Afghan legislator categorizes a dishonored cheque under the crimes of deceit, considering it as one of the manifestations of this offense. The rationale behind this approach is that the issuer of a dishonored cheque, by delivering the cheque, deceives the holder and uses the cheque as a fraudulent instrument; thus, this behavior aligns with the nature of the crime of deceit, and the perpetrator can be prosecuted as a deceiver. Moreover, in Afghanistan, cheques are defined and regulated under the Commercial Law and Law on Transactions Documents; however, the position of these laws regarding enforcement guarantees for issuing dishonored cheques remains unclear. Additionally, due to structural problems, low public trust, and limited credit activities, the Afghan banking system has not been able to make the cheque a reliable financial instrument. This study aims to identify existing legal gaps by analyzing the provisions of the Commercial Law, Law on Transactions Documents and the Penal Code, as well

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

as reviewing prevailing practices in banks, while providing a clear picture of the enforcement guarantee of cheques in Afghanistan's legal system. Furthermore, based on the research findings, practical and implementable recommendations are proposed to address these gaps.

2. Concepts

Cheque: It is a document that is provided by banks and other legal credit institutions to those who can use it to withdraw funds they have with them, in whole or in part, personally or by another person in the name or in the name of the bearer (Ansari_Taheri, 2005, p799). The Commercial Law does not define a cheque; however, according to Article 3, Paragraph 3 of Law on Transactions Documens; a cheque is: "A written document containing an unconditional order signed by the issuer and a specific bank is obliged to pay the amount stated therein upon demand in the name of a specific person or to his order or to the bearer of the document."

dishonored Cheque: A dishonored cheque¹ is a cheque issued for which the account holder does not have the amount in his account, which may be due to a balance deficit or lack of balance (Ansari_Taheri, 2005, p802).

A cheque deemed to be dishonored: A cheque is deemed dishonored when the issuer's account is blocked and the issuer, with knowledge of this blockage, proceeds to issue the cheque. (Hassani, 2005, p230).

Enforcement Guarantee: The support of official authorities, or the support of customs, traditions, and public opinion in the implementation of law, custom, and good morals. Such guarantees may be general, such as (the invalidity of a contract or unilateral act, or the non-enforceability of a contract), or specific, such as (punishment of criminals and conviction of administrative offenders). (Jafari Langroodi, 2009, p2421).

¹ It is necessary to first clarify the term "unpaid" in comparison with "bounced" (dishonored) cheques. Although the phrase "dishonored cheque" in its general sense encompasses any cheque that cannot be paid, in its specific legal meaning it refers only to cheques that are non-payable due to the absence of funds or available credit. Considering that the offense under discussion can also occur in cases where sufficient funds exist, but the bank refuses payment for other reasons such as discrepancies in the cheque details or mismatched signatures, it is more accurate to refer to this offense as "issuance of unpaid cheque." This offense can be defined as follows: the issuance of a cheque in such a manner that the bank, due to any lawful reason, refuses to pay its amount (Mir Mohammad Sadeqi, 2011, p343). In other words, a unpaid cheque is a cheque for which either the issuer has instructed the bank to stop payment, or one of the essential conditions of the cheque such as signature conformity, absence of alterations or erasures, and similar requirements has not been observed. Likewise, a cheque drawn on a blocked account is also considered a type of unpaid cheque due to the absence of available funds. (Ansari-Taheri, 2005, p802).

Given the concept of dishonored cheque in the Commercial law, Law on Transactions Documens, and the Penal Code, it appears that Article 728 of the Penal Code applies both to cheques without sufficient funds in the account on the date stated on the cheque and to unpaid cheques that have funds available. Therefore, it can be concluded that the legislator intended the term 'cheque' in its general sense, not in its specific/legal sense.

3. Enforcement guarantee for issuing a dishonored cheque

Although the absence of a location at the time of issuing a cheque does not render it legally invalid¹, the issuer does not have the right to issue such a cheque, otherwise he will be liable both criminally and civilly, and he will be deprived of a series of banking services (Askini, 2022, p264). Now, in this topic, we will explain and examine the criminal enforcement guarantee, civil enforcement guarantee, and banking deprivations according to the Afghan legal system.

3.1. Criminal enforcement guarantee

Issuing a dishonored cheque is subject to criminal prosecution; however, this does not include all dishonored cheques. In order to prosecute the issuer of the cheque, it is necessary to comply with certain formal conditions, and the competent court is also obliged to comply with the conditions stipulated in the law in order to issue a ruling. Here, we will first explain the concept and examples of a criminally prosecuted cheque, then examine cheques that do not have a criminal aspect, then discuss the formal conditions for prosecuting the issuer of the cheque, and finally, we will examine the punishment for the crime of issuing a dishonored cheque.

3.1.1. Criminally prosecuted cheque

The criminally prosecuteability of a cheque refers to cases where the issuer is subject to legal and judicial prosecution if they are not complied with. Article 728 of the Penal Code is explicit regarding the issuance of dishonored cheques: A person² who, with malicious intent, without having any assets, whether cash or credit, issues a cheque to another person, or whose credit is less than the cheque, or who, after issuing a cheque, withdraws all or part of the amount issued on the basis of that cheque from the bank, so that his assets do not suffice for the amount stated in the cheque, or who orders the authority from which he receives the money not to pay the money, or who intentionally writes or signs the cheque in such a way as to prevent the payment of the money, shall be sentenced to short imprisonment. Considering the explicitness of Article 728

¹ Paragraph 3 of Article 3 of the Geneva Uniform Law on Cheques prohibits states from enacting any rule under which the issuance of a dishonored cheque would render it invalid or void (Askini, 2022, p264).

² From the general term “person” at the beginning of Article 728 of the Penal Code, it is inferred that the issuer of a dishonored cheque may be either a natural or a legal person, and likewise, the holder of the cheque may also be a natural or legal person. However, the authority responsible for paying the amount stated on the cheque is exclusively a legal entity, which is usually a bank under our legal system.

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

of the Penal Code, a cheque is considered dishonored in the following cases and is subject to criminal prosecution.

3.1.1.1. Issuing a cheque without cash

One of the most common instances of committing the crime of issuing a dishonored cheque occurs when the cheque issuer does not have sufficient cash or credit in the relevant bank and issues the cheque with malicious intent. According to Article 728 of the Penal Code, the material element of this crime is satisfied simply by issuing a cheque without having adequate funds or credit in the bank. Visiting the bank to obtain a certificate of non-availability is not a prerequisite for the commission of the crime; rather, such a certificate serves only as evidentiary proof in court and does not affect whether the crime has actually been committed.

3.1.1.2. Issuing a cheque without having sufficient cash or credit

According to Article 728 of the Penal Code, another situation that constitutes the crime of issuing a dishonored cheque occurs when the cheque issuer does not have sufficient cash or credit in the bank and proceeds to issue the cheque. For example, if the amount stated on the cheque is 100,000 dollar, but the cash or available credit in the bank is only 70,000 dollar, then if the issuer, with malicious intent and knowing that there are insufficient funds or credit in the bank, issues the cheque, they commit the crime of issuing a dishonored cheque.

If the cheque issuer's account balance with the bank is less than the cheque amount, upon the cheque holder's request, the bank is obliged to pay the cheque holder the balance in the account, and the cheque holder receives a certificate from the bank containing the cheque details and the amount received by noting the amount received on the back of the cheque and submitting it to the bank. The said cheque is considered dishonorable for the unpaid amount, and the bank's certificate in this case will be a substitute for the original cheque for the cheque holder. In addition, the payment of the amount in the account is made upon the cheque holder's request, and he may, for reasons such as the validity of the endorsers and the like, prefer to refuse to receive the amount in order not to lose the original cheque and as a result, not to face practical problems in referring to the endorsers (Sadeghi, 2011, p351). It is worth noting that many banks do not adhere to this in practice, but rather refuse to pay the cheque in full if there is no sufficient funds and credit to pay. Also, according to the internal policy of some banks, the issuer of the cheque may be forced to pay

a fine in such cases. Of course, the issuer of the cheque can remove the reason for the ban on issuing the cheque by providing and depositing the necessary balance into the account, in which case the bank is obliged to remove the ban and allow the cheque to be reissued after verifying the balance.

3.1.1.3. *Withdrawing all or part of the amount on which the cheque was issued*

This section refers to a case where the issuer has sufficient funds at the time of issuance to pay the cheque; but after issuing and before the holder visits the bank, he personally or in collusion with another person withdraws all or part of the amount from the bank in some way, thereby rendering the cheque wholly or partially unpayable. Withdrawing the cheque from the bank is done either by receiving the amount from the bank or by issuing the cheque or... (Salari, 2015, p47).

3.1.1.4. *Stop payment order on the cheque*

A cheque is an irrevocable payment order and, in principle, the issuer of the cheque does not have the right to order not to pay it after it is issued. In some countries, except in cases of loss, theft, forgery, fraud, breach of trust or other crimes, banks do not have the right to comply with the order of the issuer of the cheque and are obliged to pay the cheque (Sotoudeh Tehrani, 2009, p171). Considering the provision of Article 728 of the Penal Code, it can be argued as follows: If the issuer of the cheque has sufficient funds (money and credit) in the bank to pay the cheque at the time of issuing the cheque, but after issuing the cheque and before the cheque holder visits the bank, he issues a written order not to pay the cheque, thereby depriving the cheque holder of receiving the money stated in the cheque; he commits the crime of issuing a dishonored cheque. However, if the order not to pay the cheque to the bank is not malicious, the material element of the crime is not fulfilled and it is not considered a crime. For example, a person whose cheque is lost, forged, stolen, or has issued the cheque through trickery and deceit can issue a written order to the bank not to pay the cheque.

In the case where a non-payment order is issued, neither the issuer nor the beneficiary will have the right to withdraw the money; rather, "in the case where a non-payment order is issued, the bank is obliged to keep the cheque in a blocked account until its settlement is determined by the investigating authority or the issuer cancels" (Motamedi, 2022, p393). Also, the issuer cannot object to the payment of the cheque after issuing the cheque; but in the following cases

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

that are understandable, the issuer can issue an order not to pay the cheque: lost cheque, stolen cheque, forged cheque, cheque obtained by trickery and deception, and cheque obtained through trust fraud and any other type of crime. Of course, the holder of the cheque can file a complaint against the person who issued the order not to pay the cheque, and if the cheque issuer's claim is proven to be false, the court can punish him; because in this case, the issuer has not only not paid the cheque on time; but has also caused moral damages to the cheque bearer and, in addition to his wandering, has also hurt his reputation and dignity (Rahimi, 2024, p295).

3.1.1.5. Incorrect cheque preparation

In some cases, the issuer of a cheque may, due to malicious intent, complete the cheque in such a way that at the time it is presented to the bank, payment is refused despite the fact that sufficient funds and credit are available in the account. For example, this may occur where the signature is incorrect or does not correspond with the specimen signature held by the bank, or where there are alterations or erasures in the text and particulars of the cheque. In any of the aforementioned situations in which the bank refuses to make payment, the cheque shall be considered a dishonoured cheque (Mansouri_Taheri, 2019, p169). The mismatch of the signature is not a reason for the cheque not being attributed to the issuer and it is still possible to object or file a lawsuit against him (Motamedi, 2022, p392). The question that may arise here is that in commercial documents, in the event of a difference between two amounts in numbers, the lesser amount is valid, and in the event of a difference between an amount in words and an amount in numbers, the amount in words is valid, so why should the existence of a difference between the two amounts stated in the cheque cause the bank to not pay the money and, as a result, the issuer to be criminally liable? In response, it should be said that the aforementioned articles in the Commercial law have specified the ruling on the matter in terms of proving the debt. That is, if the only reason for proving a person's claim is a commercial document that has a difference between two numerical amounts or between the amount in numbers and the amount in words, the judicial authorities will accept the lower amount and the amount in words as the amount of the creditor's claim, respectively, unless the beneficiary proves otherwise. However, the bank has no duty in this regard and as soon as it sees a difference in the contents of the cheque, which indicates the issuance of two conflicting payment orders by the issuer to the bank, it will refuse to pay the amount. In principle, if the bank were to be able to rely on one of the two amounts, there would be no need to mention two amounts (in numbers and in words) on the

cheque (Mir Mohammad Sadeghi, 2011, p362)¹. In practice, banks located in Herat city, when faced with such differences, such as the difference between the words and numbers on the cheque, completely refuse to pay the amount.

3.1.1.6. Issuing a cheque from a blocked account

In many legal systems, issuing a cheque from a blocked account is considered a crime as one of the examples of the crime of issuing a dishonoured cheque, but there is no explicit provision in the criminal and commercial laws of Afghanistan. An analytical review of Article 728 of the Penal Code shows that the legislator has not included issuing a cheque from a blocked account as an independent example of the crime of issuing a dishonoured cheque; while sometimes the issuer may have a valid cheque account and his account may later be blocked for various reasons and despite knowing it, he may proceed to issue such a cheque. Although such a cheque is definitely not payable due to the blocked account, non-payment alone is not sufficient to commit the crime of issuing a dishonoured cheque; Therefore, considering the principle of strict interpretation of criminal laws and the fact that the legislator has examined this crime under the title of "fraud", if the behavior committed is not one of the examples listed in Article 728 of the Penal Code, the issuer will be prosecuted not under the title of issuing a dishonorable cheque, but under the title of fraud.

Finally, it is necessary to note that issuing a dishonoured cheque is an intentional offense; that is, the perpetrator knowingly and deliberately issues and delivers a cheque to another person, fully aware that the cheque cannot be honored by the bank for various reasons. Legal scholars consider the crime of issuing a cheque to be a material intentional offense, which is completed simply by performing the physical act. Therefore, whenever someone issues a dishonoured cheque and delivers it to another person, the mental element is presumed, and there is no need to prove it in court (Walidi, 2002, p273).

3.1.2. Cheques without criminal aspects

Some cheques are not subject to criminal prosecution from the moment they are issued, such as blank cheques², conditional cheques, cheques for guaranteeing a transaction or an obligation stipulated in the cheque (such

¹ According to Article 10 of Law on Transactions Documents, if there is a discrepancy between the amount written in words and the amount written in numbers, the amount written in words shall prevail. If the words are ambiguous or not definitive, the amount may be determined on the basis of the numbers. Furthermore, according to Article 555 of the Commercial Law, in the event of a difference between the numbers and the words of the amount stated on a cheque, the words shall be considered authoritative.

² A blank cheque is a cheque that the issuer signs without writing any other details and delivers it to the holder (Qaem-Maqam Farahani, 2000, p26).

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

cheques are usually issued to provide assurance for the implementation of another obligation, such as a second cheque issued as a guarantee for the collection of the first cheque), and post dated cheques. Of course, some cheques initially have a criminal aspect; but for some reason, they lose their criminal nature. These cheques are as follows:

- *When the issuer of the dishonorable cheque has paid the amount stated in the cheque to the holder before the plaintiff files a complaint, or has provided his consent for payment, or has provided the means for its payment in the bank;*
- *If the holder of the cheque has not approached the bank to collect the amount of the cheque;*
- *when the holder of the cheque has not filed a complaint;*
- *If the plaintiff waives before the final judgment is issued;*
- *When the accused dies;*
- *If the person who issued the order to the bank is able to prove his claim. (Qaem-Maqam Farahani, 2008, p81-86).*

3.1.3. Formal conditions for prosecuting the issuer

The most important formal conditions on the basis of which the issuer of the dishonored cheque can be prosecuted are:

3.1.3.1. Complainant's complaint.

Legal prosecution of the issuer of a dishonored cheque is possible when the holder files a complaint against him with the judicial authorities. The second paragraph of Article 728 of the Penal Code is explicit in this regard: "The legal prosecution of the crime listed in paragraph (1) of this article is subject to the complaint of the injured party." its legal effect is that without the injured party's complaint, the cheque holder will not be subject to legal and judicial prosecution.

If, after the criminal complaint, the plaintiff transfers the cheque to another person or assigns his rights to the cheque, the criminal prosecution will be suspended (Beiranvand-Nemati, 2023, p8). Also, with an unpaid cheque, only the cheque holder (the person who first presented the cheque to the bank) has the right to file a criminal complaint. If the cheque holder wishes to collect the cheque through another person on their behalf while preserving their right to criminal prosecution in case of a dishonored cheque, they must indicate their identity and address on the back of the cheque along with a statement of representation of the said person. In such cases, the bank issues notices of non-

payment, whether in full or in part, in the name of the cheque owner, and the holder's right to criminal prosecution remains preserved (Golduzian, 2009, p163).

3.1.3.2. Proof of Refusal to Pay

According to Article 573 of the Commercial Code, in the event of a refusal to pay, the cheque holder has the right to refer to the endorsers of the cheque issuer and other responsible persons. The holder can prove the refusal to pay by one of the following means: first, a protest through an official document; second, a writing on the back of the cheque by the addressee with a date; and third, confirmation by a commercial court certifying that the cheque was presented on a specified date.

3.1.4. Punishment for the Crime of Issuing a Dishonored Cheque

According to Article 728 of the 1396 Penal Code, the main punishment for issuing a dishonorable cheque is short imprisonment¹. The above article is explicit in determining the main punishment as follows: A person who, with malicious intent, without having any assets, whether cash or credit, issues a cheque to another person, or whose credit is less than the cheque, or who, after issuing a cheque, withdraws all or part of the amount issued on the basis of that cheque from the bank, so that his assets do not suffice for the amount stated in the cheque, or who orders the authority from which he receives the money not to pay the money, or who intentionally writes or signs the cheque in such a way as to prevent the payment of the money, shall be sentenced to short imprisonment.

It is worth noting that since issuing a cheque is a commercial act according to Article 19, paragraph 3 of the Commercial Law and is considered a commercial transaction, the competent authority to hear claims arising from the issuance of a dishonoured cheque is the Commercial Court. According to the usual and prevailing practice in the Commercial Court of the Municipal Primary Court of Herat Province; In cases where the element of fraud in the issuance of a dishonored cheque is legally proven, since the criminal aspect of the case is a consequence of its legal aspect, the Commercial Court has the jurisdiction to hear the case. In this case, the court obliges the issuer of the cheque to pay the amount stated in the cheque to the benefit of the claimant (the holder of the cheque). Thus, the claimant's right is fulfilled and justice is duly enforced. Also, at the request of the claimant and upon the determination of the

¹ According to paragraph 1 of Article 147 of the Penal Code, the duration of short-term imprisonment is from three months to one year.

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

judicial panel of the Commercial Court, and taking into account the circumstances of the case, the issuer of the cheque may be sentenced to short-term imprisonment. However, in cases where the criminal aspect of the case is determined to be more dominant than its legal aspect, the case is sent to the Public Security Court by judicial order and further investigation of the case in accordance with the provisions of the law falls under the jurisdiction of that court.

3.2. Civil enforcement guarantee

The cheque holder may file a civil lawsuit to recover the cheque amount and any incurred losses. A criminal complaint can only be filed against the issuer; however, a civil action may also be brought against the endorsers in addition to the issuer. Therefore, if the cheque holder wishes to enforce the joint and several liability of the cheque parties (the issuer, endorsers, and guarantor) to recover the cheque amount and any losses, the only recourse is to proceed through civil litigation, and he must file a lawsuit against them (Hassani, 2005, p239). The civil (legal) pursuit, due to its associated costs, the relatively long duration of the proceedings, and the lack of enforcement guarantee, is not very desirable; however, the holder may, for reasons such as the statute of limitations (which prevents criminal prosecution) and the absence of assets from the issuer, have no choice but to file a civil lawsuit. It should be noted that for civil proceedings, unlike criminal proceedings, a certificate of non-payment in the name of the plaintiff in the legal case is not required (Mir Mohammad Sadeqi, 2011, p348).

Regarding a cheque with a legal (civil) aspect, it should be noted that a cheque may be actionable from a civil law perspective for two reasons: first, when the cheque, from the moment of issuance, lacks a criminal aspect; and second, when the cheque initially has a criminal aspect but later loses this characteristic, leaving the cheque holder with no recourse other than filing a civil lawsuit in court (Qaem-Maqam Farahani, 2008, p109). Therefore, the cheque holder can collect his rights in two ways. One is by referring to the authorities and the other is by filing a civil lawsuit.

3.2.1. Receiving the amount of cheque by referring to the liable persons

In principle, a cheque is issued when the issuer has funds with the bank, and the bank, by express or implied consent, is obliged to make the payment. If the holder presents the cheque to the bank and fails to receive all or part of its amount due to the absence of funds or insufficient credit, the holder may have recourse to the endorsers, the issuer, and other responsible persons. Article 573

of the Commercial Code explicitly states in this regard: “In the event of refusal to pay, the holder of the cheque may have recourse to the endorsers of the cheque, the issuer, and other liable persons”.

3.2.2. Receiving the amount of cheque through filing a civil lawsuit

Filing a civil lawsuit before the court is possible as a subsidiary to a criminal action. Whenever, for any reason, bringing such a subsidiary claim before the court is not feasible, the holder may independently file a civil lawsuit before the court. An independent civil action is also possible in another situation, namely when, after criminal proceedings, the cheque is not considered subject to criminal prosecution and an order for suspension or dismissal of the criminal prosecution of the accused has been issued, or when the statutory time limits and other conditions prescribed by law have not been observed by the holder. However, since criminal prosecution can only be brought against the issuer of the cheque, a civil action is usually filed when the holder intends to pursue other persons liable on the cheque such as (endorser and the guarantor) for the recovery of the cheque amount (Eskini, 2022, p282).

Article 577 of the Commercial Law regulates the civil enforcement of a cheque¹. Accordingly, in the event of non-payment, the holder may claim from the liable party not only the amount of the cheque but also the stamp duty and the costs of protest. This provision is intended to compensate for damages and protect the financial rights of the cheque holder, aiming to reimburse incurred costs and secure the holder's financial interests.

3.3. Banking Restrictions

Another category of enforcement guarantee takes the form of banking restrictions. These restrictions do not provide direct benefit to the cheque holder but serve as a means to compel the issuer to fulfill their obligation to pay the cheque. The restrictions applied against the issuer include: prohibition on opening any new bank accounts and issuing new bank cards, denial of any banking facilities or issuance of foreign currency guarantees and prohibition on issuing letters of credit in foreign currency (Banaei Oskoui, 2023, p10). The enforcement of banking guarantees is only possible when the issuer's debt resulting from a dishonored cheque is reported to all banks and financial institutions. This process depends on a request from the holder of the dishonored cheque. Therefore, a bank cannot and should not, solely on the basis

¹ Article 577 of the Commercial Law: The holder of a cheque may claim the following expenses from the liable person: the unpaid amount of the cheque, the stamp duty, and the costs of protest and other expenses incurred.

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

of insufficient funds and without a request from the cheque holder, take action to enforce such measures (Banaei Oskoui, 2023, p6). It should be noted that, in practice, the majority of banks operating in the city of Herat, when faced with dishonored cheques, merely refuse payment and do not impose any specific restrictions or prohibitions.

4. Challenges and Solutions

For a better understanding of the subject, the challenges and solutions are examined separately.

4.1. Challenges

Among the most significant challenges in the field of cheques and the issuance of dishonoured cheques are the following:

4.1.1. Legal Challenges

- Existence of legal gaps: The Penal Code and commercial regulations each address only part of the enforcement mechanisms related to cheques, and there is insufficient coordination between these legal frameworks. Such gaps may enable offenders to exploit legal loopholes and avoid effective accountability.*
- Absence of an independent law governing cheques: The lack of a comprehensive and independent legal framework specifically regulating cheques has created ambiguity in the interpretation and enforcement of related legal provisions.*

4.1.2. Practical and Banking Challenges

- Lack of a comprehensive credit assessment system: The absence of an effective and comprehensive system for evaluating customers' creditworthiness has created significant challenges for banks and financial institutions.*
- Limited trust in the banking system: Due to insufficient confidence in banks, many traders prefer to rely on informal financial mechanisms such as the hawala system, which consequently diminishes the legal and practical credibility of cheques.*
- Low level of public and commercial awareness: Many individuals, particularly traders and economic actors, are not fully aware of their legal rights and obligations regarding the issuance and acceptance of cheques.*

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

- *Lengthy judicial procedures: The process of adjudicating cheque-related disputes in courts is often lengthy, which reduces the efficiency and effectiveness of legal remedies.*

4.2. Solutions

The following measures are suggested to address the challenges.

4.2.1. Legal Solutions

- *Amending laws: Commercial laws should be reviewed and revised to establish integrated and effective enforcement mechanisms.*
- *Enactment of an Independent Cheque Law: Current regulations fail to comprehensively address the practical and legal challenges associated with cheques. Significant gaps exist regarding circumstances in which issuing a dishonored cheque is not criminally prosecutable, the procedures for handling repeated or multiple offenses, the precise specification of civil and criminal enforcement guarantee and the legal effect of a complainant's withdrawal before or after a final judgment. These gaps justify the adoption of a dedicated, independent law specifically governing cheques.*

4.2.2. Banking and practical solutions

- *Strengthening the credit assessment system in banks and digitizing the cheque system.*
- *Establishing effective communication and rapid information exchange between banks and the courts.*
- *Expediting judicial procedures: setting specific deadlines for handling dishonored cheque cases.*
- *Preventing the issuance of cheque books to individuals with a negative record.*
- *Prohibiting the opening of new accounts for issuers with a negative record.*
- *Promoting proper cheque usage and awareness of the consequences of misuse.*

5. Conclusion

Among commercial documents, the cheque is considered an enforceable document. Due to its ease of transport and frequent use, it has become a widely accepted alternative to cash, and its use in society is steadily increasing. In Afghanistan's banking system, cheques are extensively utilized. Accordingly, Afghan legislators have given special attention to the cheque, and among all commercial documents, it is the only one for which criminal liability has been specifically provided.

The validity and effectiveness of this document require the existence of strong and efficient enforcement guarantees. A study of the legal system of Afghanistan indicates that the legislator, by criminalizing the issuance of a dishonored cheque under the title of “fraud” and prescribing criminal penalties, has sought to compel issuers to fulfill their financial obligations and to protect the rights of the cheque holder. Instances such as issuing a cheque without sufficient funds or credit, issuing a cheque from a blocked account, stop-payment orders, incorrect writing, discrepancies in the cheque's contents, or other similar cases are examples of intentional conduct that entail criminal liability for the issuer and lead to criminal prosecution. At the same time, certain cheques are fundamentally exempt from criminal aspects, such as blank cheques, conditional cheques, guaranteed cheques, and post-dated cheques. Furthermore, in cases such as payment of the cheque amount before filing a complaint, the holder's waiver, or the death of the accused, the criminal character of the act is extinguished.

In addition to criminal enforcement guarantees, the cheque holder can also pursue their financial rights through civil actions. This includes filing claims against the issuer, endorsers, and other parties jointly liable for the cheque, as well as providing the possibility to recover damages, cover expenses, and protect the holder's financial interests. The Commercial law sets forth the rules for evidence, civil procedures, and direct recourse against responsible parties. This legal mechanism is particularly important in cases where the cheque lacks a criminal aspect or when the issuer has paid the cheque before a complaint is filed, ensuring the cheque's position as a reliable instrument in commercial transactions is maintained.

In addition to criminal and civil enforcement measures, banks also play an important role in preventing dishonored cheques. By imposing banking restrictions, banks can compel the cheque issuer to fulfill their obligations. These restrictions may include prohibiting the opening of new accounts, freezing

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

existing accounts, and denying any bank loans or credits. The goal is to create legal and financial pressure to force the issuer to pay the cheque amount. These restrictions can only be applied when the holder of the dishonored cheque requests it and informs the bank; banks cannot apply them just because there are insufficient funds. In practice, most banks in Herat, when faced with dishonored cheques, simply refuse to pay them and do not impose any special restrictions.

However, a review of Afghanistan's legal framework shows that cheque have not yet become fully reliable commercial document. The lack of a separate law for cheque issuance, weaknesses in criminal and civil enforcement, inefficiencies in the banking system, and lengthy court procedures have all allowed dishonored cheques to be issued without effective deterrence. Strengthening the credibility of cheques in Afghanistan requires fundamental legal reforms and a stronger banking system. Implementing the recommendations of this study could make cheque a dependable tool in Afghanistan's economy and trade, helping to promote and improve commercial activity.

6. Bibliography list:

6.1. Books:

- Ansari, Masoud - Taheri, Mohammad Ali (2005), ***Encyclopedia of Private Law***, Tehran; Mehrab Fekr Publications.
- Skini, Rabia (2022), ***Commercial Law (Bill of Exchange, Promissory Note, Warehouse Receipt, Bearer Documents and Cheques)***, Tehran; Samt Publications.
- Jafari Langroodi, Mohammad Jafar (2009), ***Comprehensive Legal Terminology, Tehran; Ganj Danesh Publications, Vol 3, Fourth Edition.***
- Hassani, Hassan (2005), ***Cooperative Law and Commercial Law***, Tehran; Mizan Publishing, First edition.
- Rahimi, Atiqullah (2024), ***Afghan Commercial Law (Complete Guide to Doing Business in Afghanistan)***, Kabul; Saeed Publications, First edition.
- Salari, Mirza Mehdi (2015), ***Criminal Cheque, First Edition***, Tehran: Jangal Publications.
- Sotoudeh Tehrani, Hassan (2009), ***Commercial Law_ Commercial Documents***, Tehran; Dadgostar Publications, Vol 3, 17th Edition.
- Abdipourfard, Ebrahim (2019), ***Commercial Law_ Commercial Documents, Tehran: Majd Publications, Vol 2, 5th Edition.***
- Irfani, Mahmoud (2006), ***Commercial Law_ Commercial Documents, Tehran; Mizan Publications, Vol 3, 2nd Edition.***
- Qaem-Maqam Farahani, Mohammad Hossein (2008), ***A Study of Criminal and Legal Issues in Cheques, Tehran; Mizan Publications, First Edition.***
- Qaem-Maqam Farahani, Mohammad Hassan (2000), ***Guide to Filing Lawsuits 3 (Cheque)***, Tehran; Dadgostar Publications.
- Golduzian, Iraj (2009), ***Essentials of Special Criminal Law***, Tehran; Mizan Publishing, First edition.
- Motamedi, Javad (2022), ***Comprehensive Textbook of Commercial Law***, Tehran; Andishe Arshad, Fourth edition.
- Mansouri, Anar Gol - Taheri, Gholam Yahya (2019), ***Special Criminal Law 2***, Kabul; Setareh Talash Publications, First edition.
- Mirzaei, Ali Mohammad (2019), ***Commercial Law of Afghanistan-Transactions Documents***, Kabul; Vazhe Publishing, First edition.

Kambiz Rahmani, *Enforcement Guarantee for Issuing a Dishonored Cheque in the Legal System of Afghanistan*

- *Mir Mohammad Sadeghi, Hossein (2011), **Special Criminal Law: Crimes against Property and Ownership**, Tehran; Mizan Publishing House, 32nd edition.*
- *Validi, Mohammad Saleh (2002), **Special Criminal Law: Crimes Against Property and Ownership**, Vol 1, Tehran; Amir Kabir Publications, 7th edition.*

6.2. Articles:

- *Benaei Oskouei, Majid (2023), **Legal and Economic Analysis of Bank Execution Guarantee of issuing an Unpaid Cheque**, Private Law Studies, Vol.53, No.1, 6-10.*
- *Beiranvand, Reza_ Nemati, Akram (2023), **Cheque Law and Damages for Delayed Payment of Cheques**, International Journal of Research on Nations, Vol.8, No.87, 8-9.*
- *Dargahi, Hassan - Ghasemi, Mojtaba - Fathollahi, Sajad (2020), **The Impacts of Bounced Cheques on Economic Growth Through the Banking Credit Risk Channel Emphasis on Enforcement of Laws: Provincial Panel Approach**, Journal of Economic Modeling Research, No.40, 28.*

6.3. Afghanistan Legislation:

- *Afghanistan. Law on Transactions Documens. Official gazette, No. 971, 2009.*
- *Afghanistan. Commercial Law. Official Gazette, 1957.*
- *Afghanistan. Penal Code. Official gazette, No. 1260, 2017.*