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## The conceptual framework of Electronic travellers Cheque in the Jordanian legislation: A comparative study

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### **Abstract**

*Banks and financial institutions offer various dependable and progressive banking services, including traveller's cheques. The electronic traveller's cheques especially, are usually not regulated by any laws, including in Jordan. This study examined the stance of Jordanian legislator on the regulation of traveller's Cheques including the electronic traveller's cheques, as in the Jordanian Trade Law 1966 and the Electronic Transactions Law 2015, considering the dearth of specific legal regulation on them. The Egyptian and Algerian laws were compared and analysed in this study in terms of their legal provisions on traveller's cheques and electronic Cheques. The analyses outcomes showed a lack of provisions for traveller's Cheques in Jordanian laws owing to unresolved issues on the legal nature of traveller's Cheques, electronic Cheques included. Hence, legal provisions on traveller's Cheques including electronic traveller's Cheques should be established in Jordan to regulate this type of banking service.*

**Keywords:** *Financial institutions, E-traveller's Cheques, Jordanian Trade Law of 1966, Jordanian Electronic Transactions Law of 2015, legal regulation.*

### **Introduction**

Cheques are among the banking services provided by banks, and this service comes in various types including the electronic traveller's Cheques. Banks provide traveller's cheques to customers in two ways.

Banks buy traveller's Cheques for customers or banks sell traveller's Cheques for banks or international financial institutions for some amount of commission. Traveller's Cheques are useful for people who want to travel without having to carry with them a lot of cash.

Using traveller's cheques, travellers are safe from theft or loss, and they also do not have to go to banks to obtain money transferred from their current banking account in their home country. Actually, non-tourists can also use traveller's cheques.

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A cheque is a commercial paper that can function as regular cash, which means that it has value in the economy.

Hence, some laws have to be in place to protect and regulate usage of cheques. Furthermore, specific penal provisions must be made available to punish cheque abuses like forgery, cheque issuance without balance, and others. Cheques come in various forms including traveller's Cheques (which also include electronic tourist Cheques) which are a universal financial payment tool issued by financial institutions (e.g., a bank) in numerous denominations.

The Model Law on Electronic Commerce circulated by the United Nations Commission relating to the International Commercial Law provided a stipulation regarding electronic Cheque in Article 6 as follows: "When the law requires that the information must be in writing, the data message complies with that requirement if the data contained therein can be accessed in such a way that it can be used for subsequent reference." Based on the article, it is clear that under the UNCITRAL Act, the electronic Cheque is a dependable and legally recognised electronically authenticated data message.

Additionally, in Article 7 paragraph (1) of the Model Law on Electronic Commerce, the following was mentioned: "When the law requires a person signature, that requirement shall be met in respect of the data message if:

(A) A method was used to identify that person and demonstrate that person's consent to the information contained in the data message. (B) That method was to be relied upon to the extent appropriate for the purpose for which it was created or for which the data message was notified in the light of all circumstances, including any related agreement."

Hence, electronic cheque also contains signature as prove of the signatory identity and the commitment of the signatory to what was signed, imparting the Cheque with the force of its legal proof. Furthermore, Article 10 of the Model Law on Electronic Commerce requires that the information in data message form must present the needed evidence argument. Next, the authenticity of data message in the evidence needs to be evaluated. This involves the evaluation on the method used for generating, storing and communicating the data, to assure that the information integrity can be preserved and the identity of its origin is determined, for any related factor.

Within the Jordanian context, the Jordanian Commercial Law No. (12) 1966 (Article 143) does not necessitate any endorsement on the back of the Cheque, and so, the name of endorsee is not written. Here, the endorsement is in blank.

The endorsement is on the back of the Cheque since the signature is on the recto (right) of the Cheque only, as a reference probably. Hence, the electronic Cheque has no holder endorsement

or is blank because the beneficiary name needs to be mentioned and signed as the required data. Hence, there is no back part needed for electronic Cheques.

### **Purpose of study**

The traditional and electronic traveller's Cheque are a new concept and there are uncertainties surrounding this form of banking service as it involves the use of electronic method, particularly the electronic traveller's cheques, owing to the newness of the service and the technology used. Hence, this study attempted to clarify such uncertainties to create understanding of its mechanism. Additionally, this study investigated whether the traditional and electronic traveller's Cheques are regulated by the provisions similar to those of the traditional Cheque or are regulated by special laws. Also, this study examined the regulation of traveller's cheques by Jordanian legislation by referring to the Jordanian Trade Law 1966 and the Electronic Transactions Law 2015. Additionally, this study investigated whether there are specific laws in Jordan regulating traveller's Cheques. Other laws regulating these Cheques were discussed as well.

### ***Problem statement***

In this study, traveller's Cheques were examined in terms of their legal nature. Also, this study attempted to examine if the electronic traveller's Cheques are covered by commercial legislation like the regular Cheques. The special legal provisions, if present, to regulate traveller's cheques within the Jordanian context were examined as well. This study further examined the degree of recognition required by traveller's Cheques should this type of cheque fulfils the conditions of normal Cheque.

### ***Study methodology***

In exploring the Jordanian legal systems to in the regulation of traveller's cheques, the recognition level of these systems, and in exploring some available laws on traveller's cheques, the comparative and analytical approach was applied in this study. Based on the outcomes, several recommendations were proposed.

### ***Study scope***

Jordanian legal provisions on Cheques, particularly on electronic traveller's Cheques as provided in the Jordanian Trade Law 1966 and the Jordanian Electronic Transactions Law 2015 were the scope of this study.

This study also discussed and compared two related laws namely the Algerian law and the Egyptian commercial law. The Model Law on Electronic Signatures of the United Nations Commission on International Trade Law UNCITRAL 2001 was discussed as well.

## **Conceptual framework for the definition of a Cheque**

A cheque has different legal definitions based on the different perspectives and the governing laws, as presented in the following subsections:

### ***Definition of a Cheque***

The term Cheque is defined in item (123/c) of the Jordanian Trade Act as the Cheque written following the stipulations in the law and includes the order of the party as the drawer to another party (usually a bank), to recompense a third party as the Cheque holder (a beneficiary) some amount of money when the Cheque is presented.

Meanwhile, the Algerian trade law article (472) provides a text on the Cheque and the determination of its necessary statements. Comparatively, the Egyptian Trade Law 1999 provides no definition on Cheque, rather, the matter is left to jurisprudence and judicial rulings. Meanwhile, in June 1865, the concept of Cheque was defined by the French law as a written document in agency form so that the drawer could draw for himself or benefit others with all or some of the available money that is bound by his command, at the drawn from. France was the first country to provide the definition and regulations on Cheques.

From the perspective of Shariah law, a Cheque is described as a document written based on certain legally defined formal constraints which include an order from the cheque issuer namely the drawer or assigner to the respondent namely the bank to recompense some amount of money to the beneficiary.

Clearly, the Islamic jurisprudence provides no distinction in its definition of Cheque as opposed to the legal definition of the term, particularly with respect to its elements and function. The Islamic Sharia jurists explained the Cheque on the basis of jurisprudence, that is, the transfer of the right.

### ***Parties of the Cheque***

A Cheque, the conventional one, generally comprises three parties namely the drawer, the drawee (bank), and the beneficiary or the check holder.

As mentioned in Jordanian Trade commercial law 1966, a Cheque entails a written document wherein the drawer asks the bank as the drawee to recompense money in certain amount to the beneficiary or the bearer of the check, upon sighting or in a stipulated sighting period.

Comparatively, the notion of Cheque has been described in the British law as the “Withdraw bond payable in cash at sight drawn on a bank.” In a Cheque, the drawer could be any party - a

natural or legal person – and the drawer is the one issuing an order to the drawee to pay the beneficiary or the bearer money. Here, the drawer becomes a guarantor of the Cheque value seeing that the Cheque was issued with the approval of the drawer. For this reason, the beneficiary or the Cheque holder can refer to the drawer to obtain the Cheque value if the drawee (the bank) declines paying the value in cash form to the beneficiary or holder.

Meanwhile, the drawee namely the bank, is the party issuing the drawer mechanism in paying the beneficiary or bearer the money value, in accordance with their prior relationship. In this situation, the bank as the drawee becomes obligated to the drawer, because bank Cheque can only be the drawee of a bank, or the Cheque has no legal status.

In addition, the bank as the drawee has to be adequately specific to allow easy identification by the beneficiary or holder. Furthermore, the bank does not have to pay the Cheque value to the bearer, and so, should the bank as the drawee be unwilling to recompense the Cheque value to the bearer, the bank cannot be coerced by the bearer to pay and neither can the bearer legally demand the payment, with the exception of certain situation, but the Cheque bearer or beneficiary is the only party with the right to refer to the drawer or endorser, and reserve guarantors.

Lastly, the beneficiary is the party the Cheque is written for, and the beneficiary is the legal owner of the Cheque. Beneficiary is in a relationship with the drawer, not with the bank as the drawee, and the Cheque is awarded to the beneficiary for specific reason or debt. On the Cheque, some data are mandatory, as stipulated by the law. These include (among others) the data on Cheque creation date, drawer's signature, place of payment, and the status of the Cheque whether unconditional or cash only.

### **Electronic Traveller's Cheque**

Technological progressions have resulted in changes in all sectors including the sectors of education, finance, industry, and so forth. For the sector of banking, the shifts in technology have dramatically change the banking environment as can be observed during the late 80's and the dawn of 90's with the introduction of card-based payment system and electronic clearing system (ECS) for electronic money transfer between banks.

Then, Real Time Gross Clearance (RTGS), and NEFT (National Electronic Funds Transfer) became available. Cheque truncation system (CTS) was introduced as well to deal with large-volume transactions so that cheques could be cleared faster. CTS comprises a Magnetic Ink Character Recognition (MICR) coding printed on all cheques read by the MICR readers. The bank and branch of the drawer will be automatically detected by the system when this MICR code is scanned. The scanned images of Cheques are electronically transferred to the drawer's bank, and using this method, clearance time is reduced.

Nonetheless, digital cheques can be forged by ways including signature duplication replacement or cheque amount alteration with digital image processing techniques. Here, the use of digital watermarking can detect such forgery. Accordingly, an e-cheque framework has been proposed, to establish an e-cheque system based on mutual authentication of drawer and payee.

### ***Collecting the value of electronic traveller's cheque and guarantees***

The mechanism of an electronic cheque is described in this section. It starts with beneficiary sending a request to the bank for an electronic cheque for traveller. Alternatively, beneficiary could buy the cheque from an institution that sells electronic cheques. Next, beneficiary visits the bank or relevant institution for cashing the cheque; beneficiary signs the cheque with respective bank employee, and obtains the check value. As the process occurs at the same place, a cheque and an ATM card are comparable.

Current payable check's receipt is regarded as receipt of the cheque content if it is a traveller's or banker's Cheque. It is similar to an endorsed Cheque drawn between banks or between branches of bank. Here, an exchange takes place in Cheque sale and purchase by the bank that receives the currency or bank deducts the said amount from the account of customer. If the Cheque is immediately payable, the customer will receive the payment immediately when the Cheque is presented to the bank as the drawee. If the amount to be transferred is in cash form, dealing with bank transfer Cheque is permissible. Otherwise, the exchange process must be executed between the two currencies, with adequate judgmental receipt, followed by a transfer with the exchange rate for electronic Cheque purchase for traveller. In this situation, the foreign Cheque should be of similar price agreed by the bank.

What differentiates an electronic Cheque from electronic payment methods is the plastic Card. Plastic card is a special card given by the Bank or licensed institution, to client. This card can be used by client to get goods and services from places or stores that accept the card. Seller of goods will provide invoice to the bank. This invoice is signed by the customer while the bank is the credit source and is the party paying the invoice value. The customer is provided with a monthly breakdown of the total payment value or deduct from the account to blink. There are three parties to the plastic card namely the card issuer, the bearer and commodity or service vendor. A special contract binds these parties together.

The plastic card was originally in the form of a metal card. The card was first introduced in the United States in 1914 and it was issued by U.S. Oil Company to its customers. Using the card, the customer could purchase their needed items from certain outlets and payment of the items would be made upon the end of a given term.

In the context of electronic Cheque, there are two key parties involved, namely the drawer and the beneficiary. The drawee is the bank usually, but the role of the bank is usually restricted to

its duty to pay the beneficiary upon drawer's order. Comparatively, for the plastic card situation involving three parties namely the merchant, the cardholder and the Bank; the bank as the card issuer is obliged to pay the merchant within the bounds as agreed with the holder, considering that bank as the issuer of the card is obliged to reliably meet the merchant's requirements owing to what bought by the card holder.

Furthermore, electronic cheque usage is characterized by high-level ease in online procurement, because each Cheque has a unique number and is used one time only while the plastic card is usable more than once, particularly if the card number has been exposed to scammer(s). With respect to endorsement: the electronic Cheque allows third-party endorsement, unlike the plastic card which can only be traded by its rightful holder, but transferring the card to the third parties is only allowed under certain conditions in the contract involving the Bank, the card issuer and the card holder.

The issuing bank could be selling bank, or other bank or private exchange companies. Banking agreements are established between the involved parties in the selling of electronic traveller's Cheques. The register keeps the information on the type of currency and the number and denominations of the sold traveller's Cheque.

In the practices of banking activities, the bank and exchange companies appear to differ, particularly in terms of bank deposits receipt, individual accounts management, mortgages, and loans. By way of contracts, the bank offers banking services and transactions including deposit contract and loan contract.

Here, the client may deposit his money with the bank as a way to prevent loss of or theft, or to gain certain return after a certain period - providing that the amount is kept by the bank, untouched - or to achieve both purposes. Bound by the conditions and controls in the loan contract, customer of bank may borrow from the bank. Meanwhile, current deposits are generally linked to deposit account through which client could withdraw the deposit through transfer from this account to another own account or to account of others with the same bank, as opposed to withdrawing the deposit in cash, because the loan is associated with the agreed-upon interest between bank and customer.

As mentioned, money is deposited to the bank generally to prevent loss of theft or to gain return or both. Bank and client are in a contractual relationship and each party is bound by certain rules and obligations.

Having the money deposited to the bank assures security of the money, which will generate psychological stability to the client, while bank. The Jordanian Trade Law Article (115) stipulates that the deposits received by bank must be returned with a value equal to one or in a number of payments when the depositor requests it or based on the stipulations of the

contract. Bank deposit is the entire amount of money the customer keeps in the bank. Work is underway that the bank opens an account when the customer enters with him in transactions called a deposit account or a Cheque account, all that the customer has in this account takes the ruling of a cash deposit, and the customer has the right to dispose of it as he dispose of a bank deposit.

The viewpoints on the legal nature of traveller's Cheque are still mixed, particularly in terms of whether this type of cheque can be classed as a Cheque as stipulated by commercial legislation. In 1955, the French Court of Cassation ruled that traveller's Cheques cannot be legally classed as a cheque despite their physical appearance, and these cheques do not include the activity for performance, rather, these cheques only include the undertaking to fulfil by the issuing bank. It was affirmed as impossible, because traveller's Cheques are Cheques as in a judgment dated January 20, 1960.

In Jordan and in most Arab countries, there is no specific law governing traveller's Cheques particularly the electronic traveller's cheques, owing to the disagreement on the legal nature of this form of Cheque.

Traveller's Cheques can be compared to credit or ATM cards because both appear to be comparable in terms of commercial contractual relationship involving the drawer, the bank and the beneficiary. Article 228 (para 3) of the Jordanian Trade Law 1966 requires that drawee's name is provided in the Cheque. Comparatively, drawee's name is provided on credit or debit cards and this allows the card holder to visit any bank or ATM and withdraw an amount of money, which could also happen in the case of electronic Cheque for the traveller.

### **Conclusion**

Traveller's cheque is a type of cheque usable by travellers especially, as they do not have to carry cash as protection from loss and theft. This type of cheque contains an order to recompense certain amount of money to the beneficiary.

Meanwhile, the electronic traveller's Cheque is written for certain individual and may not be endorsed or lapsed by statute of limitations because the date issuance is not provided in it. The electronic Traveller's Cheque has to meet the beneficiary's conditions and signature and so, payment is only made after it is verified that the signature on the Cheque is similar to that of the cheque bearer.

### ***Findings***

From the aforementioned discussion, this study presented the following major findings:



- 1- Traveller's Cheque is bound by banker's Cheque requirements in trade laws.
- 2- The electronic traveller's cheques are comparable to the ATM card in terms of function.
- 3- The electronic traveller's Cheque guarantees payment to the beneficiary the amount written by way of special exchange machine, just like the case of the common Cheque and ATM cards.
- 4- There are various benefits of using electronic traveller's Cheque to all the involved parties – the issuer, the beneficiary and the spending party – and this type of banking service also adds to the country's economy; just like the common Cheque and the local and international ATM card.

### Recommendations

Based on the study findings, this study presented the following recommendations:

- 1- Jordanian Trade Law 1966 should be amended with the inclusion of a legal provision for the electronic traveller's Cheque, that is, to have it covered by the general provisions of the regular Cheque. Also, the special nature of this type of cheque must be covered by special provisions, in the Jordanian Electronic Transactions Law 2015 especially.
- 2- Banks should issue special systems to manage the electronic traveller's Cheque, just like with the credit cards or ATM cards.
- 3- Bank employees should be appropriately trained so that they are updated on the developments in the banking domain from a legal and technical perspective.

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