Everything we should know about Checks

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Checks with characteristics similar to the current ones appeared in the mid eighteenth century after the establishment of the Bank of England, where this document had its greatest regulatory and legislative development.

In our country, Law 52 dated 13 March 1917 on "Negotiable Documents" enshrines the regulations on checks, notably in Title III on "Promissory Notes and Checks."

In Rule 7-2005 dated 21 September 2005, the Superintendency of Banks established the general guidelines on check settlement and funds availability. Additionally, Rule 1-2014 dated 18 March 2014 (amended by Rule 10-2014 and Rule 8-2015) "Whereby the rules for the standardization of personal and commercial checks in Panama are established," came into effect on 1 February 2016. We encourage you to visit our website, www.superbancos.gob.pa, "Laws and Regulations" node, for further information on the rules issued on this matter.

A check can be defined as a basic payment order against a bank where the drawer has money deposited in a checking account. It can also be defined as a document that allows the drawer to withdraw part or all of the available funds for his or a third party's benefit. Many authors define it as the result of a current account contract with a bank. It is of universal usage and the result of the development of banking.

According to the provisions of Article 919 of the Commercial Code, all checks must have the following characteristics:

1. The word “Check” written in the text of the document;
2. The clear and simple order to pay a certain sum of money;
3. The name of the drawer;
4. The indication of where the payment is to be made;
5. The name of the place and the date on which the check was issued;
6. The signature of the person issuing the check.

On the other hand, checks can be classified in three groups:

1. <u>In terms of circulation</u>:

   Open or uncrossed check: One that has the basic or fundamental characteristics above. It can be cashed by the payee or beneficiary on presentation to the bank.

   Crossed check: One where the drawer has put two parallel lines on the face of the check, indicating that it must be collected by another bank. The payee or holder must deposit it in his checking account, so that the bank that received the check can proceed to receive payment from the drawee bank and credit its value to the depositor’s account.

   Special crossed check: A crossed check in which the name of the bank that must collect it is indicated between the parallel lines.

   Restrictive crossed check: A crossed check in which the name of the only person to whom the drawee bank can pay is indicated between the lines. This means that it must be deposited only to the checking account of the person whose name appears between the parallel lines. It is also customary to write “pay the first beneficiary” or “non-negotiable” between the lines instead of writing down the name of the person that will be paid exclusively. These checks are not endorsable.

   Check to be credited to an account: One that besides being a crossed check, the drawer requires to be deposited by crediting the amount to the account of the payee. To do this, “to consign to the account of the first beneficiary” is written between the parallel lines. Of course, this check cannot be endorsed.

2. <u>In terms of contents</u>:

   Certified check: One for which the drawer requests the drawee certify the existence of sufficient funds to pay the amount. This certification cannot be issued on checks payable to the bearer.

   Guaranteed check: A certified check whose certification is mass-produced by the drawee by providing the accountholder (at his request) checkbooks in which all checks are certified.

3. <u>In terms of scope</u>:

   Traveler’s check: Checks issued by a bank in special formats that will be paid at their own branches or by their correspondents, both domestically and abroad.

   Cashier’s check: One issued by a bank on its own account to be paid to another person or even to the bearer. This check is issued by the bank, which is drawer and drawee at the same time.

Tax check: One issued by the current accountholder (drawer) to the National Treasury.

Another important aspect to know about checks is the endorsement, which is understood as the signature of the holder on the back of a negotiable document. The word originates from the expression “signing on the *dorsum*” or back.

The endorsement is the transfer of the ownership and rights of the endorsed document to a third party. If the endorsement is blank, that is, with only a simple signature and without specifications or restrictions, the document becomes payable to the bearer.

An endorsement can also be made specifically indicating to whom the document is transferred. This method of endorsement is safer, because the document may only be changed (or re-endorsed) by the person to whom it has been transferred.

The rules of endorsement applicable to commercial drafts apply to nominative checks. The blank endorsement is the one seen most often in practice, as it is very comfortable and easy to transfer these documents simply by signing on the reverse. Non-negotiable nominative checks, whether they have the non-negotiable clause inserted in the text or because they are non-negotiable by law, may be endorsed for payment only to a lending institution.

Once the check is issued, the holder of the document can endorse it in turn to the natural person or legal entity he wishes.

The acceptance of the endorsement lies with the bank that receives the document for payment.

The same happens when speaking of the re-endorsement. There is no rule that forbids the acceptance of re-endorsements. However, a best and acceptable banking practice is that banks refrain from paying or accepting checks that for any other reason they consider risky as deposits. However, the bank must make this decision (Circular 042-2009).

Another situation we can find ourselves in when doing transactions is to be given a postdated check.

A postdated check can be described as the private agreement between the drawer and drawee that they understand and accept that check will be paid on the date agreed to on the negotiable document. The bank cannot pay the check before the date, even though there are funds available in the account.

Another important issue for consumers is the one related to settlement.

It is worth noting that in Panama, the Clearing House is an administrative arm of Banco Nacional de Panamá. It consists of all member banks that perform the exchange of documents and settlement of proceeds of the exchange among themselves. This unit oversees compliance with the requirements for such operations and the security of such documents.

By means of Rule 7-2005 dated 21 September 2005 (amended by Rule 7-2009, Rule 6-2014 and Rule 2-2015) the Superintendency of Banks has set forth the general parameters for check settlement and funds availability. There is also the aforementioned Rule 10-2014 dated 14 October 2014 establishing the rules for the standardization of personal and commercial checks in Panama.

These rules also regulate clearing in general, establishing that the time period to clear checks drawn by or against banks within the market will be determined by the Clearing House of Banco Nacional de Panamá.

All these rules were issued for the purpose of reducing the period for funds availability in order to benefit all users of the Panamanian banking system.

Another important aspect we must be aware of is that the Commercial Code establishes the period the beneficiary or bearer of a check has to cash it. Article 932 of the code indicates that “the period allowed to cash a check drawn in the same place of issue is ten days from the date of issue.

If the check was drawn on a different place, the period allowed to cash it will be fifteen days, and if the check was drawn abroad, the period allowed will increase depending on the distance and means of communication logically warrants.

If the check is not presented to be cashed within the aforementioned period, the bearer will have to recourse against the endorsers or the drawer for failure to be paid, but only against the payer.

The drawer’s responsibility shall continue if he had the funds to cover the check after the issuance of the check.

The presentation in a clearing house is equivalent to payment.

Last but not least, it is important to know in which cases there will not be charges or fees applied to the depositor. Paragraph K of Article 4 of Rule 4-2011 establishes that there no fees or charges are incurred by the depositor of a check credited to his account if it was returned or rejected by the drawee bank, under any of the following circumstances:

1. The date is wrong or missing
2. There is a discrepancy between the amount written and the amount in numbers
3. The signature is missing
4. The endorsement is missing
5. Lack of funds

Checks are definitively valuable documents today. Therefore, it is essential to know a little more about their characteristics and regulations for use. We hope the information we have shared with you has been very useful.

References:

Commercial Code

Decree Law 2 dated 22 February 2008 in which the Executive Branch reedited Decree Law 9 of 1998 and all its amendments as a consolidated text, and that text was approved by means of Executive Decree 52 dated 30 April 2008.

Rule 7-2005 dated 21 September 2005 and all its amendments.

Interbank Agreements*

Rodríguez Azuero, Sergio “Banking Contracts”

Cabanellas, Guillermo, Diccionario Enciclopédico de Derecho Usual

* It is necessary to clarify that although interbank agreements reflect Banking customs and practices and are mandatory for members of the Panama Banking Association, it is also true that, while at any given moment they may be seen as sources of Banking Law, they cannot supersede standards or statutory provisions regulating the subject matter of the use or practice in question.