

THE CREDIT TITLES -THE CHECK-

Marinescu Gheorghe

Lect. Univ. Dr. , gg.marinescu@yahoo.com

Abstract *The Check is a credit title created by the issuer which, on the grounds of a credit institution, gives an unconditional order to pay on sight the set amount to a third party or to the issuer himself, who becomes the beneficiary.¹ The check must meet the form conditions and content, set by Law no.59/1934, with the made changes or additions.*

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The three parties that are bound by a check, take part in all activities in their own names : the issuer, the owner who cashes in, and the drawee who pays

The check is a formal document which must contain the next mentions stipulated by law :

1. Naming the document "Check" and write the document in an formal language;
2. The unconditional order to pay a certain amount of money ;
3. The name of the drawee ;
4. Indications of the place where the payment must be maid;
5. Indications of the day/date and place of issue;
6. The signature of the issuer;²
7. The name of the issuer, the first and last name written black on white, of the individual person, the name of the legal person which is obligated. If the drawee's name is bigger then the space allocated will write the first characters of the name on the check in the limit of the special space allocated. This does not cause the nullity of the title;
8. The unique number of identification for legal registration to the company of the issuer. The social security number, in case of individual person.³

The drawee on a check can be only a commercial bank in accordance with law

No.33/1991 or National Bank of Romania organized according to Law 34. The title is null if this condition is not respected.

In a check, if the amount written in words is different from amount in figures, the payment must be done for amount in words.

Any signature of a check must contain:

a) the complete name and surname of the individual person, or name of the legal person (trading company) that is the drawer;

b) the handwritten signature of individual person or legal representative of company, or legal empowered, or representatives.⁴

The issuer may issue a check only if he has in his account (to the drawee) the available amount for the payment.

An amount equal with the check value must be in the account of the issuer before he issue the check. Availability must be liquid, reliable and do not exist any legal or material impediment that prevents making payments.

The issue by the issuer of the check without existance the necessary funds attract civil and criminal penalties. This does not result in the invalidity of the check, it can be paid if the time between issuance and presentation, the issuer apply to the drawee necessary funds to cover the check.

The expression "certified check" means a check which a commercial bank in the position of drawee confirm availability of funds from the credit instrument.

Certification of a check may be required by the issuer or one of the beneficiaries of subsequent check and entails that the issuer can't withdraw from the account the payment amount of the check, until the expiration of its presentation.

The drawee is not directly bound by check certification but has the obligation to indemnify in case of default to the beneficiary who has suffered damage because of this.

The endorsement is the mention by which the title owner, called the endorser, transfers to another person called endorsees all rights arising from the title, thru the declaration written and signed on the title by the endorser.

The check is transmissible through endorsement if a stipulation is mentioned and also if it is stipulated based on an assignment of debts.

Like the endorsement, the assignment of debt is a specific means of transmission of the obligations, based on the consent of the will (contractual). The creditor (called the transferor) voluntarily transfers against payment or free, his own rights to another person named assignee which will become the lender of their own place and can receive the debt from the debtor.

The assignment of debt becomes enforceable from the moment of the notification to the debtor or the moment when the debtor accepts it as an authentic document.

The mentions of the beneficiary must be filled in on the white check before the endorsement from owner (beneficiary) or before it gets put into a bank for payment.

The endorsement can't be conditioned, and can't be stipulated partially. It can be valid only in full.

The endorsement must be written on the check and must be signed by the endorser and it is declared valid even if the beneficiary is not mentioned or if the endorser signed in blank. The endorsement "bearer" is the same as the endorsement in blank. In this case, in order to be valid, the endorsement must be written on the check before presenting it at the bank, to be cashed in.⁵

The endorsement passes over all the rights over the check. If the endorsement is in blank, the owner, may fill in with his own name or any other name, to endorse it again in blank or to another person. The no-dated endorsement, is judged as being made before the purge date.

Cashing a check may be guaranteed by a surety, for the entire amount or for only a part of the amount. This warranty may be given by a third party, different from the drawee, or even from a check subscriber.

The surety is given on the check and it is stipulated by the words : "for surety" or any equivalent form. It must say who is the beneficiary, or the drawer will be considered the owner. For validation, the surety must be signed by the guarantor.

The beneficiary may proceed directly against the guarantor, without being observed order of civil law because its obligation is an obligation autonomous.

The guarantor is being kept in the same way as the drawer. His obligation is valid even if it could become infirmed for any other reason as a form vice. When the guarantor pays the check, he gains the rights from the check, against the person who guaranteed for and against those who are kept on the grounds, set by the check.⁶

The check is considered valid on sight, meaning at the moment of the cash in.

In Romania, the issued and valid check must be presented to cash in before

15 days from the day it was issued, under the sanction of losing the right of endorsement.

The presentation of a check for cashing in is made in original, at the beneficiary's bank, in order to be processed for validation and sent in electronic form to the institution responsible for giving the credit.

The presentation of a check to payment is done in an original form. From the 10th of October 2008, the processing of payment instruments is made by truncation based on a convention between Romanian National Bank and commercial banks and their adherence to a payments system.

By truncation it is understood that the informational procedure contains the following operations:

- a. transfer in electronic form of the relevant information from the original instrument (bill of exchange, promissory note, check);
- b. reproduction of the original instrument image in electronic form;
- c. transmission of the electronic information obtained by the operations provided to letter a) and b) towards the payer credit institution (commercial bank).

When presented to pay an instrument by truncation, the credit institution of beneficiary must :

- a. verify if the original check comply in form and content the legal provisions, regular succession of endorsements except the authenticity of the signature of the drawer and endorsers;
- b. ensure the accurate compliance of the relevant information and the original instrument and also the accurate compliance between the reproduction of the original instrument image and the original instrument.

This kind of presentation has the same consequences as presenting the original, under the condition that the

original had to be issued under the care of the law.⁷

The credit institutions use this process of truncation, under the law of sticking to a payment system. The moment when the credit institution receives the notice, from a valid payment system and from an electronic confirmation, represents the moment of releasing the money.

Total or partial refusal to pay of an instrument presented by truncation is in electronic form and is transmitted by the paying credit institution.

According to the refusal to pay received from the paying credit institution, the beneficiary credit institution who owned the original instrument will write on it:

- a. the presentation date to payment, to ascertain whether presentation was made within;
- b. declaration of refusal, dated and signed by the legal representatives of beneficiary credit institution.

The mentions on the original credit instruments are the proof of payment refusal. The paying credit institution has the obligation if decided to refuse the payment to transmit enrollment application for refusal to pay to the Bureau of Payment Incidents, no later than the day of the refusal. The refusal will be registered as appropriate in the national file of checks. Who feeds automatically the file-risk individuals with payment incidents registered on name of individual person, or name of the legal person, to avoid further incidents later. The person registered with a check incident has no right to issue checks for one year.

In case of refusal, the owner may ask the court in charge of the territory to form a notice, directly on the check or on a different document. The incapacity of the people who must pay doesn't absolve the owner of the obligation to make a notice, with the exception when the drawee is

bankrupt, where the bankruptcy notice holds the place for the protest notice.

The owner may exercise the right to go after the endorsers, or the others involved if the check hasn't been paid, and if the refusal of the payment was made before the purge date.

The owner may ask for the value of the unpaid check by the retrogression law, the calculated interest starting from the day of presentation, also the incurred expenses.

The one who paid due to the retrogression law may ask from the endorsers the whole paid amount, the interest regarding this amount, and of course, the incurred expenses.

The check has the value of an enforceable title for capital and

accessories. The court is competent make this check enforceable, and its entitlement is indisputable.⁸ The debtor could make an opposition to execution in 5 days from the day of receiving the notice, at the court responsible for the action. The court will decide in emergency conditions under the guidance of the Civil Code. The decisions may be objected with an appeal in 15 days since the decision.

In the case when the paying credit institution finds out later, that there are differences between the paid amount and the written amount on the check, it has the right to ask the credit institution of the beneficiary the adjustment of the amounts paid in error ; action performed in 5 labor days, tops, from the day the notice had been received.⁹

¹ The Norm of National Bank of Romania no.6/2008 amending and supplementing Framework Norm National Bank of Romania no.7/1994 regarding the trade made by the commercial banks and the credit institutions with the checks, based on Law no.59/1934 on check amended by Government Ordinance no.11/1993 approved and amended by Law no.83/1994, Official Monitor of Romania, Part I, no.509 from 07.07.2008, art.4

² Law no.59/1943 regarding the check, Official Monitor of Romania no.100 from 1934.05.01, art.1

³ Law no.127/2009 approving Government Ordinance no.38/2008 amending and supplementing the Law no.59/1934 regarding check, Official Monitor of Romania, Part I, no.294 from 06.05.2009

⁴ Law no.59/1943 regarding the check, Official Monitor of Romania no.100 from 01.05.1934, amended by Government Emergency Ordinance no.38/2008, Monitorul Oficial al României, Partea I, nr. 284 din 11.04.2008, art.11

⁵ Law no.59/1943 regarding the check, Official Monitor of Romania no.100 from 01.05.1934, amended by Government Emergency Ordinance no.38/2008, Monitorul Oficial al României, Partea I, nr. 284 din 11.04.2008, art.16-17

⁶ Law no.59/1943 regarding the check, Official Monitor of Romania no.100 from 01.05.1934, art.28

⁷ Law no.59/1943 regarding the check, Official Monitor of Romania no.100 from 01.05.1934, amended by Government Emergency Ordinance no.38/2008, Monitorul Oficial al României, Partea I, nr. 284 din 11.04.2008, art.32.1

⁸ Law no.59/1943 regarding the check, Official Monitor of Romania no.100 from 01.05.1934, art.53

⁹ The Norm of National Bank of Romania no.6/2008 amending and supplementing Framework Norm National Bank of Romania no.7/1994 regarding the trade made by the commercial banks and the credit institutions with the checks, based on Law no.59/1934 on check amended by Government Ordinance no.11/1993 approved and amended by Law no.83/1994, Official Monitor of Romania, Part I, no.509 from 07.07.2008 completed with The Norm of National Bank of Romania no.1/2009, Official Monitor of Romania, Part I, no.30 from 15.01.2009, art.166