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Challenges in the Implementation of the Amendments on the Cheque's Issuance Law

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Introduction

Numerous problems caused by returned cheques in recent years in the banking network and its negative spillover effects to the judiciary and ultimately to the country's economy, along with the key role of the current gaps in the Cheque Issuance Law in these problems provocation, led to the convergence of related bodies in compiling the new draft of this law and its announcement for implementation in the country. This goal was met in 2018 by announcing key amendments to the Cheques Issuance Law. Although some articles of this law had been amended in 1993, 1997, and 2003, the amendments of 2018, emphasizing the coverage of the evolutions in this 16 years after the last amendments, have covered a wider range of dimensions.

After 2003, most of the changes in cheque regulation had been done through current account directives and its different versions announcement to the banking network. However, due to the regulator's approach to making key evolutions in this payment instrument, a new version of this law was prepared in December 2018 with the approach of transition to electronic platforms. The attitude of the new law is based on restoring credit to the cheque as a payment instrument, and migration to the electronic procedures in issuance, endorsement and transfer, settlement, and even following-up related judicial procedures of cheques, which is expected to end up in the predicted evolutions in a maximum period of two years as mentioned in the law.

These developments have led to the discipline in the issuance procedure of checkbooks and the exertion of homogenous regulations in the individual's access to the checkbook and have also increased the Central Bank's supervision over its issuance by banks. Actually, by these evolutions, the discretion of checkbook issuance -on the basis of the same procedure and principles for all customers- has been delegated to the Central Bank - and the existing biases in the possibility of customers with bad cheque's access to this payment instrument have been severely restricted.

Even providing the possibility of inquiring about the cheque holder's credit status in this law is an effective step in creating transparency and reduction in the current problems due to the returned cheque cases. Actually, this law would increase the account holder's credit



monitoring capacity for the recipient of the cheque by enhancing the number of information that could be inquired from the developed system in the long run.

Also, the possibility of considering a sort of costs for the holder of the returned cheque with a short interval after the return of the cheque in the form of lack of access to a wide range of financial services of the banking network has increased the enforcement power of this law in terms of effective punitive measures. In the trial process of returned cheque cases, due to the imposed specific and explicit standards, a short procedure has been achieved too.

However, achieving all the expected objectives of this law would not be achieved without implementing the prerequisite infrastructure at the expected level, scrutinizing the existing challenges in its implementation, and formulating strategies for their management. Since in drafting this law, a system-based approach has been followed for switching to the electronic coverage of all procedures governing cheque; therefore, examining the various dimensions of this law's execution in the banking network during the almost two years' period after its implementation can illustrate various dimensions of the challenges in the new procedure's application. Examining these challenges along with the ongoing measures of the Central Bank and the Judiciary for covering the non-implemented aspects of this law can also provide a more accurate understanding of these problems.

The necessity of the Research and Methodology

In the **Amendments on the Cheque's Issuance Law**, some duties have been delegated to the banks, credit institutions, the Central Bank, and the Judiciary which cover the procedures from the issuance and transfer to the clearance of cheques based on regulatory and systemic infrastructures mentioned directly or indirectly in its articles.

Some of the necessary regulatory infrastructures mentioned directly in this law are:

- Electronic cheque instructions (Article 1)
- Executive bylaw on the one-year suspension of deprivations of some holders of returned cheques by the opinion of the Provincial Security Council based on the impact of those firms on the economic security of the province (Note 1 of Article 4)
- Terms of conditions on receiving checkbooks and the method of credit ceiling calculation (Article 5)
- Terms of conditions on direct withdrawal services in the form of case cheques (Note 2 of Article 5)

Among the above regulatory infrastructures, so far, the requirements, criteria, and executive procedures of electronic cheque (Payment Systems Department, 2018; the Central Bank, 2020) and the executive bylaw of Note 1 of Article 5 of the Amendments on the Cheque's Issuance Law (Council of Ministers, 2019) have been prepared and notified to the banking



network. Among other regulatory infrastructures, the draft of the current account (in Rials) directive and the conditions for using guaranteed bank cheques in the form of a new draft of the current account directive are being reviewed and finalized at the Central Bank.

Another regulatory infrastructure that is indirectly required in the **Amendments on the Cheque's Issuance Law** is the directive on the Central Bank's notification pattern in blocking accounts of the returned cheque's issuer (Article 4). Although the primary draft of this directive has been prepared in the Central Bank, so far, it has not been shared with banks and credit institutions and has not been finalized

Along with regulatory infrastructures, systemic infrastructures are also required for this law implementation. The system-based nature of this law and its emphasis on the use of electronic systems with functional communication between them in all processes governing the issuance, endorsement, transfer, settlement, and even judicial procedures following-up in the optimal long-term subjective model, leads to the explicit reference of two systems in this law named national credit rating system and financial convictions recording system that has not developed yet. But along these two systems, the Central Bank has developed some other systems such as CHAKAD in the electronic transfer of cheques, SAYAH in accounts information integration, and PICHAK in following up cheques exchange, even though the last one has not launched completely yet.

Hence some regulatory and systemic gaps for the complete implementation of this law exist that for better elaboration and analysis, it is required to refer to the users of this law at banks. In this regard, some sessions with banking experts held up and based on precise scrutiny of articles and notes of this law according to the background of regulatory & systemic requirements, the current challenges in implementing these articles has been derived based on the following subjects that are completely elaborated in this working paper.

Implementation Challenges

- Electronic cheque
- Account holder notification of the returned cheque
- Lack of a unified approach in imposing restrictions on the provision of banking services to the account holder of the returned cheque
- Problems of the Central Bank in suspending restrictions for important economic enterprises in economic security
- Elimination of the effect of returned cheques with formal consent
- The problem of banks in inquiring non-filed lawsuits of cheques for eliminating the adverse effects of returned cheques



- Time-consuming procedures for eliminating the adverse effects of returned cheques due to the lack of systemic connection
- The pattern of the credit limit setting
- No validity date specification on cheques
- Case cheques
- Procedure and scope of inquirable information
- Problems of banks in announcing missing cheques
- Problems of banks about forging cheques
- Abuse of some unqualified people in receiving a checkbook

Summary and Recommendations

The increasing misuse of cheques as a payment instrument and the accumulation of returned cheques cases in the Judiciary has led to amendments in the Cheque's Issuance Law based on a system-based approach, which is in accordance with the needs of the growing trend of electronic banking in the banking network.

However, due to the systemic nature of this law, the expected procedure in implementing all its executive dimensions within the two years provided by the law has not yet been achieved; nevertheless, based on the results of in-depth meetings with experts of this field, it was observed that the current process is aimed at addressing and solving some key challenges, although a number of other challenges have been neglected.

These taken measures can be summarized as launching the "PICHAH System" in tracking cheque exchanges along upgrading the existing systems of SAYAD and CHAKAVAK, developing new current account directive and a pattern of blocking accounts by the Central Bank, setting up a memorandum of understanding between the Central Bank and the Judiciary for required information systems for necessary inquiries by banks and even the Central Bank, the new procedure of the Central Bank on Sayyad cheques issuance, and new procedures for submitting requests of restrictions suspension for important enterprises.

Nevertheless, some challenges in the technical infrastructure have still remained, especially in electronic cheques and new approaches to QR Code-based inquiry. Of course, considering the key role of PICHAH and CHAKAD systems' infrastructures in some of the existing challenges, it seems that after launching the PICHAH system, the CHAKAD system and the required technical infrastructures to apply electronic cheques should be given priority in the required actions by the Central Bank. Completion of the NAHAB system and systematization of authentication are other systemic and technical shortcomings.



Of course, the Central Bank needs to take measures in regulating the procedure of informing the account holder of the returned cheques, imposing penalties on banks that withdraw from blocking the accounts of the customers holding the returned cheque, and developing the credit ceiling determination pattern. However, among the above regulatory dimensions, it seems that the credit ceiling determination model's development is more challenging.

In the current procedure of cheque issuance, measures should be taken for informing the cheque recipient of the number of unsettled cheque liabilities and the number of returned cheques, including the ones with eliminated adverse effects or not. Also, there is the necessity of establishing a linkage between the cheque registration in PICHAK with inquiry and the consent effectiveness for eliminating the adverse effect of a cheque after its systemic approval by the final holder in the PICHAK system. In comparison to the previous two areas of technical and regulatory infrastructure, these strategies seem to have fewer difficulties in implementation, even though the aforementioned strategies could be somewhat classified as technical infrastructure, too.

Finally, some measures should be taken in executive requirements based on the obligation to adhere strictly to the exertion of Article 6 penalties of the Amendments on the Cheque's Issuance Law in case of branch officials' noncompliance with legal obligations.

In addition to the above items, given the system--based nature of the main executive evolution in the field of cheques based on the PICHAK system, the necessity of its user-friendliness characteristic, along with other related interactive systems that may be used in the future, has great importance. Hence, it is recommended to consider measures according to society's living realities for people who do not have a smartphone or internet access. Of course, in this regard, increasing effective awareness and preparing users for the upcoming developments by creating the necessary culture - not only for issuers and recipients of cheques but also for branch employees - would play an effective role in the success of this evolution in the society. Also, in launching a system with such large dimensions for which the peripheral applications have been considered, it is recommended to be more patient and confident and not make hasty decisions by approaching the deadlines for its launch. Of course, considering the expansion of systemic dimensions of cheque, banks should also manage the structural disperses and, in some cases, low related systems linkages in their internal structures.

It is recommended to review the results of this study in the relevant working groups in the Central Bank to develop a timing schedule and more precise prioritization of the required measures to address these challenges. In developing the solutions discussed here, asking cooperation and poll of the main users of this law - including banks and credit institutions - should be considered.



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