ON PROCEDURES FOR MAKING PAYMENT BY CHECK

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Check is a useful and convenient non-cash means of payment. In developed countries where a wide range of modern forms of money (credit cards and the like) have been introduced for years, check is still the most popular and present in some 50% of non-cash payments made every year.

In Vietnam, two years have passed since the day Decree 30/CP came into effect. Although payment by check has become something familiar to everybody but it is still unpopular because of many reasons. According to a document prepared by the Vietnam State Bank for a workshop on non-cash payment in March 1998, up to Dec. 31, 1997, 511,000 out of 7,285,109 (or 7%) payments made through banks were by cheque. The payment by cheque accounted for VND148,500 million (or 9.9%) out of VND1,500,000,000 paid through banks. In HCMC, the country's biggest city where the personal income is high and the number of banks and companies is big, the payment by check, up to Sep. 30, 1997, represented only 3.7% of the number of payments made through banks (83,400 out of 2,203,500 payments) and 2.7% of the total value of all payments (VND28,450,000 million in comparison with 391,920,000 million).

These data show that check hasn't been a popular means of payment to both laymen and businesspersons. There are many reasons for this situation, but in this article,we only want to discuss some regulations and procedures set by Decree 30/CP and Circular 07, and spare other problems with the use of check for the next article.

Article 11 of the Decree 30/CP reads "The check is payable within 15 days since the date on which it is signed." And Article 4, Part I, of the Circular 07 states more exactly "This term of the check includes Sundays and other holidays. If the check expires on Sundays or holidays, the term will be prolonged by one more day after." Article 1, Part III, of the Circular also requires that the payee, during the term of the check, should send all checks along with a list of checks received to the paying bank (or collecting bank). If the payee, because of force majeure, fails to produce these checks during the term, the payee should send all checks, the list of checks and a force majeure certificate issued by local governments to the paying bank (or collecting bank). And Article 4, Part III of the Circular reads "The collecting bank has the right to refuse to collect checks and return them to the payee if the check passes its expiry date and the payee fails to produce a force majeure certificate as required by the above Article 1, Part III."

From the above-mentioned regulations, we can draw three problems to discuss:

1. The term of the check

The term of the check, as set by regulations, lasts for 15 days. The following are my opinions about this.

+ According to regulations about the issuance and use of check included in Decree 30/CP, the check in

Vietnam could be transferred directly if it is a bearer check, or transferred by endorsement if it is an order check. These regulations are appropriate to international practices although paying by check is still new to local business circle. Checks, and other negotiable instruments, help to reduce waste of time and facilitate the circulation of money. The 15-day limit on the term of a check, however, seems too short to smooth the transfer of checks.

+ This time limit is more inconvenient because it fails to discriminate between the time during which a check should be presented to the paying bank and the time it should be paid. The time limitation of check presentation allows the drawer of a check to have enough time to send it to the payee, and allows the payee to transfer it to other parties or present it to the paying bank. The time limitation of presentation is usually shorter than the time limitation of payment. In developed countries, the length of time limitation depends on the territory in which the check is paid.

Thus, those two time limits should be set as soon as possible, but this matter also requires a lot of discussion.

2. Non-acceptance

The regulation that allows the bank to refuse overdue checks with no force majeure certificate is also unreasonable. If the bank refuses these check, it fails to play its role as a payment center. In addition, when returning the check to the payee, it forces the payee to ask the drawer for a new check. The two parties may have one of the following cases:

a. The drawer, or endorser, will feel annoyed because they have signed or transferred the check as required by law and now they should do it again. Although this matter is only a trifle, it is still an unpleasant one.

b. The drawer of the check (usually a buyer) can exploit a loophole in this regulation by delaying the issuance of a new check if he (or she) wants to make use of the payee's money. In this case, the interest of the payee isn't ensured.

c. When asked to replace the overdue check with a new one, the drawer of the check can pay in cash if it is available at that time. Thus, the bank can't control the payment and miss a chance to serve its customers.

d. If the drawer of the check receives goods after handing the check to the payee and for reasons best known to himself, he can't make use of these goods, so he wants to return them to the payee and pay some damages for breach of contract. Although this case is very rare (because all buyers have already made plan to use goods before receiving them), it can cause damage to the business plan of the seller (that is, the payee).

Those analyses show that the regulation on non-acceptance by banks is unreasonable.

3. Procedure for getting force majeure certificate from local government

In my opinion, the regulation that requires the payee to produce a force majeure certificate when failing to present the check to banks on time is unnecessary, because the check is an order for the bank to pay a sum of money to the payee. This means that the bank is under obligation to cash the check when it is presented (if the check is legally drawn, there is enough money in the drawer's account, and the payee has legal qualifications). The payee is the owner of the sum of money stated in the check and no payees want to leave his money in others' accounts and they always have reasons for their failing to present checks on time. No local governments could know what these reasons are or want to spend time investigating these reasons. That is why all local governments are ready to certify all forms presented by the payee providing that he (or she) produces ID card and permanent residency certificate. Thus, the act of granting a force majeure certificate become a mere formality that can cause banks' customers to feel reluctant to make or receive payments by check.

So I want to present here my suggestions dealing with above-mentioned shortcomings in regulations about payment by check.

Firstly, the banking authorities had better petition the Government to adjust the regulation on the time limitation of check payment set by Decree 30/CP according to the following directions:

a. If time limitations of check presentation and check payment aren't discriminated clearly, the time limitation of check presentation needs to be made more reasonable. This time limitation should be neither too long nor too short. If too short, it will cause great difficulties to check transfer (which is considered as the best quality of check); and if too long, the check after being in circulation for an unreasonably long time, can be lost or changes can be made to numbers written on it. In my opinion, the time limitation could be up to 20 days for checks from the same province or city, 30 days for checks from other provinces in the same zone and 40 days for checks from other zones.

b. To solve this problem more basically, those two kinds of time limitation should be discriminated clearly. The time limitation of check presentation could be set up as stated above while the time limitation of check payment could be up to three months of the date when it is drawn. When the use of check becomes more popular, it's necessary to make a check ordinance or a check circulation law in order to make time limitations in Vietnam suitable to international practices.

Secondly, the regulation on force majeure certificate from local governments could be revoked, because, as mentioned above, it causes a lot of troubles for check users.

Thirdly, if the above-mentioned regulation is revoked, the bank can honor certain overdue checks (not stale or out-of-date checks) in order to encourage payment through the banking system. If two kinds of time limitation is discriminated clearly, the bank can take one of the following measures to deal with overdue check:

+ If the check passes the time limitation of presentation, not the time limitation of payment, the bank can honor it if the check is drawn and transferred legally and there is a sufficient credit balance in the drawer's account.

+ If the check is presented within time limitations, but it isn't drawn and transferred legally or there isn't enough money in the drawer's account, the check will be returned unpaid to the payee.

+ If the check isn't presented within time limitations, and there isn't enough money in the drawer's account, the bank can refuse to pay it.

I hope that the above-mentioned suggestions will be used for making banking procedures more simple, rights and duties of both banks and customers clearer and the use of check more convenient■