

Banking Law

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Payment & Payment System

- CBB Law - Art. 1:
- Payment System: means any system for the settlement of cash payments or bank transfers between licensees.
- Settlement System: means a system for the settlement of any party's payments or obligations arising from transactions in cheques and securities.

Payment & Payment System

- Settlement of cash
- Art. 275 of the Law of Commerce:

A money deposit is a contract which grants the bank the right to possess the deposited money and to dispose thereof in its ordinary course of business with an obligation to return an equal amount thereof to the depositor. Repayment of the deposit shall be in the same currency of the original deposit.

Payment & Payment System

- Settlement of cash
- Art. 275 of the Law of Commerce:

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The contract of deposit may stipulate payment of interest and in this case the provisions of Article 76(4), (5) and (6) shall apply.

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Art. 76 of the Law of Commerce:

(4) Interest shall be calculated at the legally applicable rate unless a different rate is agreed upon, provided it shall not exceed the legally prescribed limits.

(5) the BMA shall, by a notice issued from time to time, determine the legal rate and the maximum rate of interest provided in the preceding paragraph

(6) the interest amount shall be payable at the end of each year if the debt is granted for more than one year and on maturity date if the debt is for one year or less unless otherwise agreed.

Payment & Payment System

- Settlement of cash

- Art. 276 of the Law of Commerce:

(1) The bank shall open an account for the depositor wherein shall be entered all the transactions carried out between the bank and the depositor or between the bank and third parties for the account of the depositor.

- See also Arts 277 - 283 of the Law of Commerce

Payment & Payment System

- Transfers between licensees

- Art. 304 of the Law of Commerce:

(1) A bank transfer is an operation whereby the bank debits the account of the person who has ordered the transfer in writing and credits another account accordingly.

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- Transfers between licensees

- Art. 304 of the Law of Commerce:

(2) This operation may be used to effect the followings:

(a) transfer of a certain amount of money between two persons each of whom has an account with the same bank or with two different banks.

(b) transfer of a certain amount of money from one account to another both of which are opened in the name of the person giving the instruction of transfer with the same bank or with two different banks.

Payment & Payment System

- Transfers between licensees
- See Arts. 305 - 313 of the Law of Commerce

Payment & Payment System

- Bills of Exchange
- See Arts. 350 - 441 of the Law of Commerce
- Bills of Exchange: unconditional order in writing addressed by one person to another signed by the person giving it requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a certain sum in money to the order of a specified person or to the bearer

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- Article 350 - a bill of exchange must contain:
 1. The term "bills of exchange" (in language of instrument)
 2. Unconditional order to pay a sum certain in money
 3. The name of the drawee
 4. The name of the beneficiary
 5. The place of payment
 6. Date of maturity
 7. Date and place of the bill of exchange
 8. Signature of the drawer

Payment & Payment System

- Parties to a bill
 - The Drawer
 - The Drawee/Acceptor
 - The Endorser/Indorser
 - The Payee

Payment & Payment System

- Negotiation of a bill - a bill is negotiated when it is transferred from one person to another by:
 - Delivery if it is payable to bearer
 - By endorsement and delivery if the bill is payable to order

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- Endorsement of a bill:
 - Effect: guarantees the acceptance and payment of the bill (Art 364(1)).
 - Except the condition as below, any other condition is not effective and shall be disregarded (Art 361)
 - Endorser may prohibit subsequent endorsement (Art 364 (2))
 - Endorsement may not be predated. A predated endorsement is deemed to be a forgery (Art 370)

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- Consideration for payment of a bill:
 - Drawer (or its principal) shall provide the drawee funds for payment thereof (Art 371)
 - Payment can be deemed - set off (Art 372)
 - Acceptance by drawee constitutes evidence of readiness to make the payment (Art 373 (1))
 - However, if drawee disputes/denies the duty to pay, the burden is on the drawer to prove that consideration has moved to the drawee at the time of maturity of the bill)Art 373(2))

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- Acceptance of a bill:
 - Means: the signification by the drawee of his assent to the order of the drawer (not required by all negotiable instruments, eg, cheque: Art 451(1)).
 - A bill may be presented for acceptance at any time up to the maturity date (Art 379)
 - If payable on a fixed date after sight, must be presented for acceptance within one year from its date (Art 381(1)) except shorten or extend by drawer or endorser (Art 381(2))

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- Acceptance of a bill:
 - Acceptance is required, among others, if the bill requires acceptance (Art 380(1)) or if payable at fixed period after sight or the place other than the domicile of the drawee (Art 380(2))
 - A drawee may request for acceptance following the first presentment (Art 382(1)) but the presentation shall not obliged the holder to surrender the bill to the drawee (Art 382(2))

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- Acceptance of a bill:
 - Acceptance must be written on the bill and signed (signature on the face of the bill is acceptable)(Art 383(1))
 - Acceptance must be unconditional, except with respect to the amount (Art 384(1)) and other alteration will amount to rejection although the modified terms will bind the acceptor (Art 384(2))
 - Once accepted, payee is bound to pay the value on maturity (Art 386(1))

Payment & Payment System

- Maturity of a bill:
 - At sight
 - Following a certain specified period after sight
 - After the lapse of certain period from the date of the bill
 - On a certain specified date
 - See Article 392

Payment & Payment System

- Maturity of a bill:
 - If payable at sight - must be paid on presentment
 - Must be presented within one year of the date of drawing
 - The drawer may shorten or extend the period, endorser may only shorten it
 - Drawer may stipulate that presentment must not take place before certain date
 - See Art 393

Payment & Payment System

- Maturity of a bill:
 - If payable at fixed period after sight, shall commence from the date of acceptance or protest (Art 394)
 - If the acceptance is not dated, the acceptance is assumed to have taken place on the last date of the one year period after being presented for acceptance (Art 395(2))
 - Once accepted, payee is bound to pay the value on maturity (Art 386(1))

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- Maturity of a bill:
 - If payable after the lapse of certain period, see Art 395
 - Month(s) - the corresponding date of the month(s)
 - If no date = last day of such month
 - Beginning - 1st; middle = 15th, end = last day
 - 8 days = eight days NOT a week
 - 15 days = fifteen days NOT 2 weeks
 - Half month = fifteen days

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- Payment of a bill (See Articles 397 - 409):
 - To be presented for payment on the date of maturity
 - Holder may not reject partial payment - unpaid balance to be protested (against drawer, endorsers and/or other obligors)
 - Payment before maturity - on drawee's risk
 - If lost - by court order after proving ownership and providing a guarantee which shall lapse if no claim/demand filed after 3 years

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- Other aspect of a bill of exchange:
 - Standby Guarantee (Articles 388 - 391)
 - Recourse (Articles 410 - 422)
 - Intervention (Articles 423 - 431)
 - Identical Copies (Articles 432 - 434)
 - Copies (Articles 435 - 436)
 - Alteration (Article 437)
 - Statutory Limitation Period (Articles 438 - 441)

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- Promissory Notes
- See Arts. 442 - 445 of the Law of Commerce
- The same as Bills of Exchange (except, the expression is “promissory note” & there is no the name of drawee)
- Maker’s liability = Acceptor of bill (accepting drawee)
- Acceptance = Presented to the Maker for him to make the entry (date & signature)

Payment & Payment System

- Cheques
- See Arts. 446 - 491 of the Law of Commerce
- Particulars = the same as Bills of Exchange (except, the expression is “cheque” & there is no maturity date)
- Cheques issued and payable in Bahrain may only be drawn on a bank - otherwise it is not valid (Art 449)
- Provision for interest on the cheque is void (Art 454)

Payment & Payment System

- A cheque may not be issued unless there is sufficient fund for its payment at the time of drawing (Art 450)
- No acceptance for cheque
- However, drawee may be required to certify the cheque, which drawee cannot refuse to do
- Available funds shall remain frozen until the cheque is presented for payment (Art 451)

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- By drawing a cheque = drawer warrants its payment (Art 456) :
 - If payable “to bearer” or “a named person or bearer” = payable to bearer (Art 452)
 - “Not negotiable” = only payable to recipient (Art 452)
 - “Not to order” = negotiable only by assignment of right
 - Otherwise, negotiable by endorsement if payable to a named person or by delivery if payable to the bearer (Art 457)

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- Endorsement (see Articles 458 - 460, 462, 463) :
 - Unless otherwise agreed, by endorsing a cheque the endorser warrants the payment of the cheque (Art 459)
 - Endorser may prohibit further endorsement = not warrant payment to any holder of subsequent endorsements (Art 459(2))
 - May not be postdated. Postdating endorsement is deemed to be forgery (Art 463(3))

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- Payment of the value of the cheque may be guaranteed in whole or in part by a third party other than drawee or any of the signatories of the cheque (Art 464)
- A cheque is payable on the date of issue, any provision to the contrary is void. It may not be presented for payment before the date indicated thereon (Art 465)
- A cheque drawn/payable in Bahrain must be presented within six months from the date of the cheque (Art 466)

Payment & Payment System

- If several cheques are presented simultaneously for payment against an account with insufficient funds = to be paid according to the date of issues (Art 471(1))
- If drawn from the same cheque book and bear the same date = the cheque with first serial number shall have preference unless it is established otherwise (Art 471(2))
- The liability of the surety provided in case of lost cheque is for six months if no claim or suit filed during such period (Art 473)

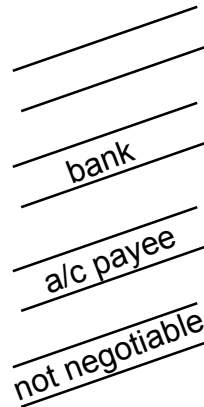
Payment & Payment System

- The holder of a cheque may cross it (Art 477(1))
- Crossing made by drawing two parallel transverse lines across the face of the cheque (Art 477(2))
- Cheque crossing = Generally or Special (Art 477(3))
- General crossing - payable to any collecting bank or its customer (Art 478 (1))
- Special crossing - only payable to collecting bank as named or another bank duly authorised by such bank (Art 478(2))

Payment & Payment System

- General Crossing:

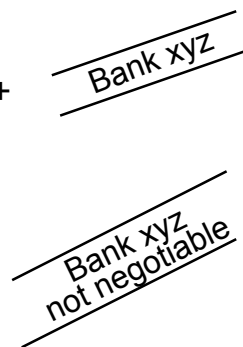
- Just two parallel tranverse lines
- The above with the word 'Bank'
- The above with 'a/c payee'
- Or that with 'not negotiable'



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- Special Crossing:

- Two parallel tranverse lines + name of specific bank
- The above + 'not negotiable'



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- 'Account Payee Only':
 - Cheque can only be credited to the account of payee (Art 479(1))
 - The objective = to minimise the chance of fraud
 - Disregarding that = negligence
 - Also liable to compensation of any resulting damage to an amount not exceeding the value of the cheque (Art 479(3))

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- Holder's right to have recourse:
 - against drawee, endorser & other obligors if presented within time, not paid and establishes non-payment by drawing up a protest (Art 480(1))
 - Against drawer even when the holder fails to present it for payment to drawee (see Art 481 and the exception therein)
 - Non payment of cheque: 1. Drawee's statement & date of cheque presentation & 2. Collecting bank's statement on cheque, dated & signed, that cheque was presented within time but hasn't been paid.

Payment & Payment System

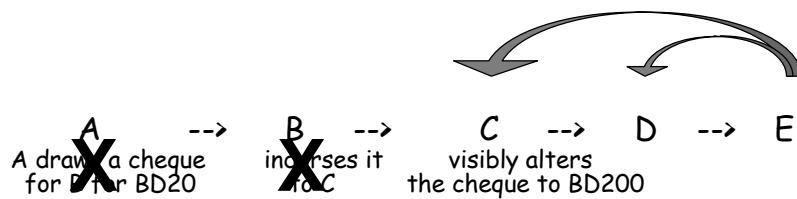
- Forgery & Alteration:
 - Drawee is liable for any damage
 - Unless if the damage due to the drawer's negligence
 - Any condition to the contrary shall be null and void.
 - See Article 484

Payment & Payment System

- If not paid?:
 - Law of Commerce is silence on the matter
 - It will be useful to differentiate between apparent alteration and non apparent alteration
 - Apparent alteration = a person with reasonable care would observe that it has been altered
 - Non-apparent alteration = is the alteration executed so cleverly that is is not visible on reasonable scrutiny

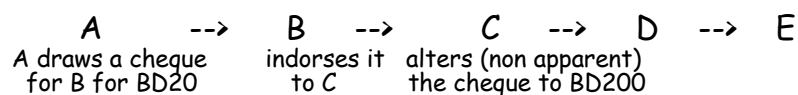
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- Apparent alteration:
 - Any parties prior to the alteration will be discharged
 - Subsequent parties who took it will be bound by it as altered



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- Non-apparent alteration:
 - Similar principal shall apply
 - Except - with regard to a holder in due course (acting in good faith, for value, without notice). Hence E has recourse against all the below:



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- Additional duty of a bank:
 - Every bank shall deliver to its customer a book containing a blank cheques to be used for payment through its treasury
 - To print on every cheque the name & account number of the recipient of the cheque book
 - It must make sure the signature on the cheque corresponds to the specimen signature and approved signatures recorded with the bank
 - See Article 490

References:

- CBB Law
- Law of Commerce
- Roberts G's Law relating to Financial Services, 6th ed (for additional reading)