

New Dimension towards the Usage of Cheques in Sri Lankan Payments System

VSN De Lanerolle

Faculty of law. General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka
delanerolleindya@gmail.com

Abstract- *The usage of cheques other than cash (Coins and Note) and e- payments are integral part of Sri Lankan payment system. Bank cheques continue to remain as the main non cash payment in the country. In recent time with the introduction of new technology for the paper base payment system, the usages of cheques have been appreciated. Simultaneously the new legal and regulatory environment for the growth of electronic payment system have been presented by the legislation nevertheless legal environment relates to paper base payment system remain stagnant. Though the Central bank designated the national cheque clearance functions under the Monetary Law Act no 58 of 1949 and is regulated by the payment settlement Act no 28 of 2005, did not incline to safe usage of cheques like introducing cheque clearance via Post office in the area to avoid the possibility of happening impediments and calamity of cheques. According to the above facts, it is revealed that the legal protection given to the customers of the usage of cheques, by upgrading the existing law or imposing new legislations, are poor in this stage. The main goal of this project is therefore to fill this gap. Moreover it is further given a comparison with the jurisdiction of India. Information in relation to this will subject to both primary and secondary sources, referencing journals, statutes, licensed commercial bank reports. Eventually the existing legislation, in relation to customers of the usage of cheques, to be upgrade and new introductions like Inter- city cheque speed clearance and clearing house membership to the post office should be given by enacting new provisions for the existing law.*

Keywords -Cheques, Payment System, Post office

INTRODUCTION

In modern world, payment systems have been enhanced unprecedentedly. Most of the countries have shifted towards electronic financial transactions instead of traditional financial transactions (paper base medium). In Sri Lanka, cash (Coins and Note) remains the most popular retail payment structure. Nevertheless Cheques are the immensely popular non cash retail payment instrument. In recent time with the introduction of new technology, the paper base payment system has been facilitated by the development of emerging electronic payment mechanisms specially for improving efficiency of

cheque payments in Sri Lanka. Simultaneously the guidelines and the regulatory framework for the growth of electronic payment system have been recognized and adopted. From the outset this paper focuses on the legal protection given to the customers of the usage of cheques by formulating a proper mechanism in relation to the paper base payment system. It is to be discussed whether the legal protection given to the customers of the usage of cheques poor in this stage along with that it is assumed that the legal framework, in relation to customers of the usage of cheques, to be upgraded and business activities through the usage of cheques will be increased by introducing new cheque clearance system. A new cheque clearance system has been initiated to launch for the purpose of upgrading the existing cheque clearance process by the Central Bank of Sri Lanka (CBSL). Accordingly, as the evolution of the payment system in Sri Lanka Cheque Imaging and Truncation (CIT) system, was handled by LankaClear (pvt) Ltd (LankaClear), the national clearing house under the guidance of CBSL, was launched in 2006. LCPL performs the national cheque clearing function as designated by the Central Bank of Sri Lanka (CBSL) under the Monetary Law Act and is regulated by the Payment and Settlement Systems Act. To strengthen the regulatory and operational framework for Cheque Imaging and Truncation System, the Payment and Settlement Systems Act No. 28 of 2005 was adopted for the proper and efficient implementation, administration and enforcement of the provisions of the aforesaid Act. This Direction may be cited as the general direction in respect of Cheque Imaging and Truncation System.

This research was conducted by combination of qualitative methods. Generally it was employed journal exercises, in context observation in books on negotiable instruments, reference with regard to the payment and settlement Act no 28 of 2005, Electronic transaction Act no 19 of 2006, payment Devise Act no 30 of 2006 post office ordinance and Bill of exchange ordinance no 25 of 1927. Moreover Mobile payments guidelines no 1 of 2011 for the bank led mobile payment service and Mobile payments guidelines no 2 of 2011 for custodian account based mobile payment services were referred. Additional information was obtained from online article through

internet resources for the purpose of this research. These resources included legal institutions in other countries which had the track record of successfully implementing new recognition system and new approach for the cheque clearing system. Data from the interview of authorities in payment and settlement department in Central Bank of Sri Lanka were analyzed for the purpose of concerning the steps which had been executed in relation to cheque clearing process in paper base payment system.

I. CHEQUE.

A cheque as a negotiable instrument is a written order made from one person instructing his bank to pay specified amount of money to another person. According to the bill of exchange ordinance no 25 of 1927, cheque has defined as a bill of exchange drawn on a banker payable on demand. All the cheques are bill of exchange, but not all bill of exchange are cheques. Trace back to the history, the first printed cheque, application came into existence in 1717, which was introduced by the bank of England. During the second half of the 19th century, as cheques became more widely used, provincial clearings were set up, based in towns around England and Wales. Subsequently the process has spread over the world. It had been a tremendous growth until the electronic payment mechanism embraced the payment system. In Sri Lanka, before emergence of technology in relation to cheques and its clearing process, the commercial banks handed over physical cheques to LankaClear for clearing. It had a long process to be executed and also reflected certain issues and limitations since paying bank is responsible for the payments that they release to the beneficiary of the cheque holders. In order to avoid the frauds, banks had to physically examine the cheques itself as a reliable way. Apart from delay of the clearing process, people were using cheques as counterfeit to delay payments. They issue cheques with the intention of committing frauds knowing that they did not have enough balance in their account to support it. In the last resort the payee is negatively affected and embarrassed. On the whole it reflects certain loophole in the manual clearing process.

II. CHEQUE IMAGING AND TRUNCATION SYSTEM

This was the modern version of clearing process which was flown from automate to electronic clearing process. Cheque Imaging & Truncation System (CITS) is an image-based cheque clearing system, which replaced the physical cheque with electronic information, flowing throughout the clearing cycle. This process eliminated the actual cheque movement in cheque clearing and reduced the delays associated with the physical movement of cheques.

When considering the protection given to the customers of the usage of cheques, a person who may cross a cheque can pass on a perfect title, he hold the bill free from defects in the title of prior parties and he can enforce payment against all prior parties. On the side of Lanka clear, they shall be responsible for the rules, procedures, roles, responsibilities, duties and function of the CITS participant.

Most of the cheques are dishonored since the cases of cheque bounce which are common in these days. Moreover it can be identified types of cheque frauds namely as,

- Counterfeit - copy cheques printed by various methods on non-bank paper to look exactly like genuine cheques and drawn by a fraudster on genuine accounts.
- Forgery – a genuine cheque that has been stolen from an innocent customer and used by a fraudster with a forged signature.
- Fraudulently altered- genuine cheque that has been made out by the genuine customer, but a fraudster has altered the cheque in some way before it is paid in, e.g.by altering the beneficiary's name or the amount.

There are many incidence had occurred on the offence of fraudulently altered. A suspect who had altered the value of a cheque to 985,000 from Rs. 2650 and also attempted to cash Rs. 972,000 on a stolen cheque as reported on Lanka Newspaper.com (2005). It is reflected that issues in relation to the cheque clearing process have been increased nevertheless the IT security infrastructure for the financial institutions and customers becomes vital in order to prevent risk and threats. Under the electronic transaction, the risk can be mitigated through the use of digital signatures. Along with that LANKASIGN (authentication for the use of digital signature) has been gathered with CITS.

Preventive measures have been taken by implementing domestic rules and regulation on forgery, fraudulently altered and cheque bounce. Some of them can be identified under s.401 in penal code that issuing cheques without fund is a criminal offence and s. 25 of the Debt recovery Act in relation to the offence commit by the drawer. Counterfeit is another mode of fraud which commits with the assistance of advance technology.

The advance technology needed to be recognized in order to prevent such impediments. The ultraviolet (UV) printing is being advanced as emerging technology in

relation to the cheque security features. The functional UV cheque authentication process has been launched by India, Malaysia and Nigeria in current contest. The obvious benefit of such features is that they help to detect and discourage fraud: Many would-be cheque forgers fail because they are simply unaware that such items are present; others are deterred by the difficulty of printing a convincing fake.

The cheque imaging devices (cheque scanners or reading devices) are increased with the development of cost effective UV cameras. UV stands to benefit the banking system as shorten the time to clear the cheques and also identify fraudulent cheques, and places tremendous pressure on the accepting bank to detect forgeries on Day One. However UV is difficult to prevent hard figures on fraud since it is in working process. In contrast to above that there exists a clear correlation between the use of advanced electronic clearing techniques and a reduction in successful fraud attempts. Computer assisted verification can be accomplished by visually inspecting normal and UV scanned images on a display, and flagging suspect cheques. Moreover, machine-readable UV allows greater precision. Protection is covered from both alteration and forgeries at the same time since different techniques under the UV printing linked with machine reading.

It is observed that the major limitation on UV security feature was the lack of proper application to read it by machine until recently, which was adjusted by fitting UV cameras into the cheque scanners.

The more common methods of UV cheque verification are recognized as UV scatter spray, UV fiber paper, printed UV background, printed UV logo, UV serial number and 2D bar code.

- UV scatter spray- Spots of UV ink are spattered randomly on the cheque. The cheque is valid only with the presence of UV.
- UV fiber paper – ultraviolet fibers are included in the paper itself which is similar to the technique use in notes. It is given the higher protection since it cannot be reprinted on fake papers.
- Printed UV background- patterns on the background which made of difference designs, strips of waves with UV ink in cheque except in the key areas such as amount and space of the signature.
- Printed UV logo- A logo is printed across sensitive areas of the cheque or in specified

locations. It completely makes difficulties on forgeries.

- UV serial number- a set of numbers in a particular order, printed with the VU ink which reflect a specified code similar to MICR in order to prevent forgery.
- 2D bar code- information is stored in the ways of both horizontally and vertically in a graphic image in order to hidden from human eye.

The recognition of aforesaid factors will guide to the sophisticated paper base payment system with the assistance of advance technology in order to protect the customers of the usage of cheques from the cheque scam. Successful implementation to be executed by amending the provisions in the Payment and settlement Act in order to promote, payment system safety, control risk and expand the transaction with the medium of cheques to the international contest since the part of the electronic payment system namely mobile payment service shall be used only for domestic transactions.

When considering the further protection and the accessibility on the side of the customer of the usage of cheques, it seems that service on the bank in relation to the cheque needed to be further reaches to the customers of the usage of cheques specially in the rural areas (developing areas) in Sri Lanka.

An alternative for the above issue would be the post office. Nevertheless according to the post office ordinance, Banking Act no30 of 1988, payment settlement Act no 28 of 2005 or monetary law Act no 58 of 1948, it has not been granted the post office to carry out banking services to the customers of banks. In contrast to the domestic law in Sri Lanka, it would be a great advantage if the customers of the bank can reach to their nearest post office instead of reaching to the bank to encash their cheques in order to prevent forgery, fraudulently altered cheques and prevent from stolen them. Similarly it would be better to withdraw or deposit money in their bank account. Sri Lanka post has been serving their quality postal services and familiar to customer. It has been covered by establishing post offices throughout the island. According to the statistics, Sri Lanka post has a total of 4737 post offices in the whole country. It reflects a post office for every 14 kilometer radius. This would be benefits for specially those in rural areas who may live miles from the nearest bank branches. As the result of that possibility to select the alternative would be the nearest post office.

According to the objectives of the Sri Lanka post, it has been declared that to improve the relationship and cooperation among customers, postal employees and other stake holders involved in Sri Lanka Post and Maintain financial stability within the postal network which will give linkage in relation to the objective of the Central Bank of Sri Lanka. Financial system stability requires a stable macro-economic environment, effective regulatory framework, well organized financial markets, sound financial institutions and safe and robust payments infrastructure. The maintenance of financial stability entails the prevention, detection and reduction of threats to the financial system as a whole.

In Sri Lanka contest most people willing to encash money through cashiers rather than using machines with the help of passbooks issued by banks although the electronic payment system is existence. Many elderly people have not the clear knowledge on the electronic payment system there by still rely on the physical cash withdrawal, deposits cheques.

The recent advancement for the growth cheque clearing is that the cheque clearing at post office branches. This system, has been execute by the Hongkong and Shaghai Bank Corporation (HSBC), has commenced by United Kingdom (UK). Along with that some institutions including NetWest Lloyds TSB and Halifax bank Company had commenced service on cheques paid through post office braches. HSBC current account holders will soon be able to make cash deposits and check balances at the Post Office. It has been built a grip with the post officer in order to bank's customers to access their account at the post office branches. According to the branch banking of the HSBC, it provides services available at post office branches. Services are introduced namely as check customer's balance on their current account, withdraw cash from their current account and deposit cash into their current account. Moreover the customers have been allowed to deposit cheque using a pre -printed HSBC credit slips. It shortens the time than clearing them at the HSBC branches. "Certain circumstances, subject to status, we may offer a cheque encashment service at Post Office branches to customers who are unable to use a Chip and PIN card." as reported on HSBC.

That would be better alternation in payment system in Sri Lanka to enhance the transaction via the usage of cheques parallel to the electronic transaction. Moreover the Sri Lanka post transacts with HSBC as the agency services.

Commencing such activity will appreciate the usage of cheques annually. According to the operational highlight

of the annual report 2013/14 in LankaClear has shown that Rs. 7228 billion total value of cheques had been cleared. As chief executive officer of lankaClear has mentioned that the volume of cheque cleared during the financial year of 2013/14 was 48.5 million, which was increase of 2.4% compared with previous financial year. According to the statistic the cheques are still in the vital position and preferred for non-cash payment system.

Considering the legal environment it is needed to be strengthening domestic law with regard to the frauds on usage of cheques. The holder of the cheques is received the protection given it from the cheque itself when it is crossed, not negotiable or drawing it as account payee only. In such situation it is more difficult for fraudster to steal and encash from the bank. Provided that some situation where altering a genuine cheque to add an extra name to a payee line without any of the original detail being removed. Similarly there is a high amount of risk in relation to the cash cheques since those are paid for the bearer instead of depositing on an account. It will generate a loss and the threat for the actual owner of the cheque holder. On the other hand it is waived the responsibility of the paying bank. Nevertheless protection is available for paying bank, if the bank has made the payment in good faith without negligence during the course of the ordinary business of the bank. In the last resort protection is lost on the side of the usage of the actual cheque holders.

III. ENACTMENT OF DOMESTIC LAW

In Sri Lanka there many legislative enactment have been imposed to formulate, adopt and monitor the implementation of a payment system policy. The CBSL is the sole authority to maintaining financial system stability. The payment and settlement Act no28 of 2005 which is the Act provide regulation on the CITS and legal provisions are placed under the Act. The general direction of the Act is not in derogation of any other written law, rules and regulation of the clearinghouse (LankaClear). Moreover it is recognized that electronic presentment of cheques and all related matters, including the requirements for valid presentment, collection, retention of cheques, the dishonour of cheque so presented and responsibilities of bankers. Thought the protections of customers are covered in the Act, it has not been declared what type of protection to be given for the aggrieved customers of the usage of cheques. The Debt Recovery Act no 02 of 1999 is linked with offence commits by the account holders by which they are charged under this Act. Any person who draws, a cheque knowing that there are no funds or not sufficient funds in the bank to honour such cheque, shall re guilty of an offence under this Act and shall on conviction by a

Magistrate alter summary trial be liable to punishment. Moreover the Penal Code of Sri Lanka is also stated that issuing cheques without fund is a criminal offence.

The function on the cheque clearing system will be able to streamline and extended protection for the cheque holder can be grant by taking the contribution of the post office branches which would minimize threats by ensuring the easy access to the clearing branches. Until now the Sri Lanka Post has not the clearing house membership to execute clearing functions. According to the post office ordinance ordinance, there is no definite provision on cheque clearing and its functions as well.

According to a function as to promote the standards of products and maintain a service of international standard that would reflects opportunity to enhance the quality and extend their service by which it shows a path to make combination with banks. There is a possibility to expand the dimension of Sri Lanka post and introduce banking affairs with regard to the cheque deposits and encash them. It is needed to be executed an amendment to the postal ordinance. Section 10 (1) of the ordinance on interchange of money orders and postal orders, the manner in which and condition subject to which such order issued and paid, comes under arrangements with other countries for the transmission of postal article.

IV. ENACTMENT OF INTERNATIONAL LAW

Ghana- with regard to forgery and dud cheques, Bank of Ghana enforce regulations on the application fines and strict application of the sanctions. It is an offence under the law of Ghana to issue cheques knowing that it would contain an insufficient balance in the account to support to the amount on the drawn cheque, defraud and countermand cheques issued subsequently by the holder without the good faith. Any person found guilty shall be fine or imprisonment under the section 313A of the criminal offence Act no 29 of 1960.

India- section 138 of the Negotiable Instrument Act 1881 directs toward the cases of dishonor cheque which are the criminal offence and is punishable by imprisonment not exceeding two years or with the monetary penalty or with both. The offence of bounce chaques is given the same legal capacity by the section 138 of the Act along with cheating under the section 420 of the penal code. It has been given the opportunity for the payee to file a civil case to initiate money recovery procedure in the civil court from the drawer under order 37 of the code of civil procedure (1908).

United Kingdom - with regard to the non-cash payment The Bill Of Exchange Act 1882 and Cheque Act 1957 and 1992 cover the definition and the scope of the cheque.

Singapore- the law relating to dishonor cheque is being considered under the section 415 of the Penal Code. Moreover any person found guilty for an offence of forged cheques for the purpose of cheating is punishable not exceeding 02 years under the section 420 of the penal code. It is wholly inoperative where a signature on the cheque is forged or places a signature without the authority of the actual cheque holder under section 24(1) of the Bill Of Exchange Act.

V. KEY FINDINGS.

Usage of cheque in current contest acts as an integral part in Sri Lanka's payment system. With the introduction of advance technology (CITS has replaced the automated cheque clearing system), the growth of the cheque usage has been appreciated. Nevertheless electronic payment modes are existence. While the electronic payment mechanisms provides number of benefits for the customers, there is a definite percentage of usage of chques still engaging with traditional paper base payment system. According to the statistics in 2013/14 in LankaClear on cheque presented for clearing has been increased in 2.37% in contrast to 2012/13 Although the cheque holders have been given the protection, it is still needed to be upgrade. Ultra violate printing as a cheque security feature needed to be recognized in Sri Lankan contest. Except the rules and regulation on banking and certain legislative provisions in relation to the cheques under the negotiable instrument, there is no any specific and effective mechanism to act for the offence in relation to the usage of cheques. Moreover the lack of proper access to bank branches affects to the usage of cheques specially in rural areas and also it affects to many elderly people who transacting with banks. Alternative method has recognized. The withdrawal and deposit of cash through the cheques at post office braches are commenced in the banking industry in the world although Sri Lanka has not implemented it yet.

VI. PROPOSAL.

The existing legislative provisions governing the cheque payment system contains certain loopholes. It is needed to be amending the legislation in order to cover the efficient and effective legal protection in favor of the customers of usage of cheque. Outdated legal provision in the aforesaid legislations should be amended otherwise it may break streamline on the cheque payment system. It would be obvious amend the Post office ordinance in order to giving banking function such

as cheque deposits and encash the cheques by which it will be given effective advantage to customers. HSBC has given current account holders to access to their current account and withdraw cash using a cheque at post office branches. This would be a comfortable operation on the side of cheque holders in Sri Lanka. The advance cheque security feature of Ultraviolet printing should be introduced apply to the new cheque clearing mode called Cheque Imagine and Truncation System.

Moreover public awareness programs on proper usage of cheque in the paper base payment system and preventive measures from the forgery, counterfeit, stole and fraudulently altered cheque are not sufficient enough to educate the customers of the banks and are still in the primary level in current contest. Implementing effective advance awareness among customers, institutions, corporates and administrative bodies on threats towards the usage of cheques and prevent from those calamity is a contemporary requirement. The awareness programs needs to be concurrent to the general public in order to educate them without any effort. Another emerging trend on the cheques through the technology is recognized as a way sending a digital image of the physical cheque via mobile phone from the point of customer to the bank. In order to establish such type of facility, it is vital for government to take steps.

VII. CONCLUSION

It is clear that payment system in Sri Lanka is a combination of electronic payments and the paper base payment system. Even though the usage of cheques has the definite percentage, the recent orientation moves towards to the electronic payment. The existing legal framework on the usage of cheque should further strengthen in order to mitigate errors forgeries and corruption in the cheque payment system. Moving toward to Sri Lanka Post makes formidable task to expand the usage of cheques specially in rural area in Sri Lanka.

ACKNOWLEDGMENT

This research was supported by Payment and Settlement department of Central Bank. I thank to those who provided insight and expertise that tremendously assisted the research. I would also like to show my gratitude to those for sharing their knowledge during the course of the research.

BIOGRAPHY OF AUTHOR



The Author is a third year undergraduate of Kotalawala Defence University. The research, which he has presented to the 8th International Research Conference, related to the usage of cheques under the category of payment system in Sri Lanka.

The inclusion of the research consists with the new legal and regulatory environment for the growth of paper base payment system. In addition to that the paper revealed the issues relate to usage of cheques in paper base payment system and it has been presented some suggestions to upgrade it.

REFERENCES

- Barnes, J & Dworkin, T. M. (2000) *Law for business*: Irwin McGraw Hill
- Goode, R. (1995) *Commercial Law*: Penguin books
- Goldman, A. J. & Sigismund, D. *Business law: Principles and Practices*: Houghton Mifflin company
- LankaClear (2015)SL *Rupee cheque clearing/overview*. [online] Available from: http://www.lankaclear.com/product_service/1-overview [Accessed 13/06/2015]
- LankaClear (2015) *common card and payment switch*. [online] Available from: http://www.lankaclear.com/product_service/10-overview [Accessed 13/06/2015]
- Sri Lanka. Payment and Settlement Act no 28 of 2005. Section 44(g) 2005
- Post office ordinance no 11 of 1908. Section 10 (1)(g) 1908
- Reeday. T. G (1976) *The law relating to banking*. Cheque. Chapter 13. London: Butterworth &co. ltd
- Sri Lanka, Bill of exchange ordinance no25 of 1927. Section 73. (1927)
- Sri Lanka, LankcClear (pvt). (2006) *Annual Report*. [online]. P 01. Available from: http://www.lankaclear.lk/anual_report/10/2012-2013.pdf [Accessed 13/06/2015]

Sri Lanka, Payment and Settlement Department (2006) *General Direction – Cheque Imagine and Truncation system. Central Bank*
http://www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/directions/psd/6_GenDirection_2006e.pdf

the Cheque and Credit Clearing Company, (2012) *cheques and cheque clearing facts*. [online] p.05. Available from: http://www.chequeandcredit.co.uk/files/candc/press/cheques_the_facts_2012.pdf [Assessed 13/06/2015]

Technologybanker (2013) *New improved cheques clearing system introduced by CBN*. [online] May 06. Available from: <http://www.technologybanker.com/it-ops/new-improved-cheque-clearing-system-introduced-by-cbn> [Accessed 14/06/ 2015]

Ultraviolet cheques security. *Understanding a new era of automated fraud prevention*. [online] Available from: https://www.google.lk/?gws_rd=ssl#q=ultraviolet+cheque+security [Accessed 13/06/2015]

UV cheque authentication process. *Prevention of fraud in inward clearing* [online] Available from: https://www.google.lk/?gws_rd=ssl#q=UV+cheque+authentication+process+in+sri+lanka [Accessed 13/06/2015]
Theguardian(2012) *HSBC joins the banks using post officer’s counter culture*. [online] September 2015. Available from:

https://www.google.lk/?gws_rd=ssl#q=UV+cheque+authentication+process+in+sri+lanka [Accessed 13/06/2015]