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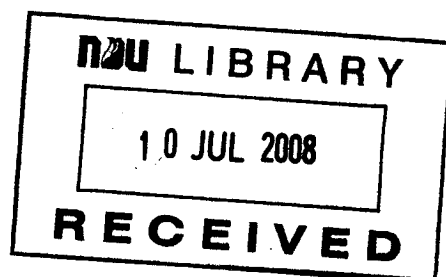
Faculty of Political Science, Public Administration & Diplomacy

**The Implementation of Electronic Check Collection in the  
Lebanese Banking System:  
A comparative study between the Lebanese and U.S. laws**

**M. A. Thesis**

by

**Noha Atallah Harfouche**



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Submitted to the Faculty of Political Science, Public Administration &  
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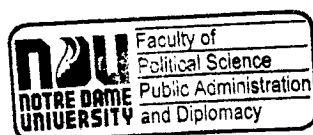
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# Introduction

## -A- Introduction

Check collection is the procedure of physically moving original paper checks from the bank where the checks are deposited to the bank that pays them. This transportation can be inefficient, slow and costly. While most countries are reconsidering faster ways in the procedures of collecting checks, Lebanon is still far behind in that field.

The USA has issued a federal law in October 28, 2004 called **check 21**<sup>1</sup> that is designed to enable banks to handle more checks electronically, which should make check processing faster and more efficient. Instead of physically moving paper checks from one bank to another, it can be replaced by capturing a picture of the front and back of the check along with the associated payment information and transmit this information electronically. If a receiving bank or its customer requires a paper check, the bank can use the electronic picture and payment information to create a paper “substitute check.” This process enables banks to reduce the cost of physically handling and transporting original paper checks, which can be very expensive.

Electronic check processing is a safe and reliable way of processing payments. It uses a technology that has been developed and tested to process check information securely.

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<sup>1</sup> Check clearing for the 21<sup>st</sup> Century Act. The Federal Reserve Board. Washington D.C., 2001. <http://www.federalreserve.com>

## **-B- Thesis Statement**

Traditional methods of collecting checks between Banks are proving to be a very slow procedure in Lebanon. A Check is a bill of exchange drawn on a bank and payable on demand. A client who deposits a check in a Bank that needs to be collected from another Bank must be delivered by hand through the clearing house in the Central Bank.

This procedure usually takes between 3 and 4 days during which the client is not informed whether the check will be paid or not.

The check is a way of covering a debt but instead of using cash money people can use checks, but they remain highly risky until their collection.

In most banks, clearings are found in the department responsible for processing checks, manual or automated, depending upon the size of the bank and the volume of transactions. However, no matter who performs the function or how large the bank is, the objectives of collection remain the same:

- To forward items for collection so that funds are available as soon as possible;
- To distribute all incoming checks and deposits to their destinations;
- To establish whether deposit totals balance with the totals shown on deposit tickets;
- To prove the totals of general ledger entries and other transactions;
- To collect data for computing the individual customer's service charges and determining the availability of customer's funds;

- To accomplish the assigned functions at the lowest possible cost.

Automatic collection has the benefit of accelerating the collection procedures; Banks have made a progress in that field by collecting their own checks between their different branches. But it would be more useful if that automatic procedure can be applied on different banks as it is the case in the USA after the launching of the Check 21 law.

The benefits that could be obtained out of the automatic on-line collection procedures are:

- Reducing cost and time;
- Expanding the use of checks.

What are the tools needed in Lebanon in order to implement this procedure?

The electronic collection procedure is in fact being improved between branches of the same bank but it needs to be evolved in order to link all private banks together through the Central Bank.

The most important role to be played in the strategy of the electronic collection is the Central Bank's, for it is the main actor through which the checks are now being collected, therefore it is its duty to make this procedure available by implementing new rules and introducing new regulations.

The Central Bank may find difficulties in implementing this procedure because of the following measures:



- The 1956 law on banking secrecy<sup>2</sup>;
- Confidentiality of every bank towards its clients;
- The cost of such an implementation.

The thesis provides suggestions allowing the introduction of electronic collection and protects customers' privacy.

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<sup>2</sup> Banking Secrecy Law of 1956, 1956. <http://www.bdl.gov.lb>

## **Theoretical framework of the study**

### **-A- Approach and Methods**

The qualitative and quantitative methods will be applied in the analysis of data. In this respect, the research methods will include comparative research, involving collection of data from various sources and evaluation of these data as they are relevant and applicable to Lebanon.

The research thus will basically focus on the possibility of implementing new methods in collecting checks in Lebanon and the contribution given by the American Check 21 in this process.

The role of Lebanon's Central Bank will show that he is the actor responsible of implementing the procedure, and its relation with other private Lebanese banks to establish the structure and strategies of concluding such electronic service.

The study will mainly be conducted through the evaluation of banking laws related to the subject and their contribution in its development. Case studies will demonstrate the benefits of electronic clearing and its potential impact on banking transactions.

The content analysis will basically focus on:

- Lebanese Banking Law;
- American Law Check 21 published in 2004.

## **-B- Literature Review**

Previous experiences have shown that the on-line clearing of checks is possible in Lebanon since it has been implemented between branches of the same bank. In depth studies are needed with respect to applying the procedures of automatic clearing of checks within the Lebanese Law.

A large body of bankers, lawyers, electronic and communication technicians must work together to establish the necessary procedures under the supervision of the Central Bank of Lebanon.

To date, academic research in this field is lacking in Lebanon. Operationally, Lebanese private Banks should, through a committee representing them, submit a request to the Central Bank to form a body whose purpose will be the development of an automatic clearing mechanism.

To achieve this purpose, extensive review of the banking law will be required. Hopefully, this initiative will provide a richer context for understanding the necessity of an on-line clearing system in Lebanon through the application of the aforementioned means.

This work examines the following hypothesis: up-to-date technology should be applied as soon as possible especially in the banking area to allow our banks to reach a simpler and faster way in banking transactions, knowing that the checks are one of the most important tools in those transactions.

The Check 21 legislation was intended to modernize the US check clearing system by providing an interim step towards allowing banks to exchange checks electronically, rather than in paper form. Electronic check imaging and the ability of financial institutions to exchange checks electronically is the first major innovation in the check-handling and processing process since the invention of the magnetic ink character recognition line in the 1950s. The consumer and economic benefits that will accrue from this technology are potentially immense.

The implementation of the equivalent of Check 21 Act in Lebanon can create a new value proposition for check imaging technology, which will encourage depository institutions to implement check imaging and exchange. Financial institutions that have already implemented check imaging have learned how pleased their customers are that they can now have instant access to copies of their checks when they visit branches, speak on the phone with customer service representatives, or view pictures of their checks on the Internet.

Moreover, the legislation suggests empowering customers to better manage their finances and detect and prevent fraud against their accounts since they are provided more information about the transactions in a timely manner.

Many opinions related to the subject stated during the hearings organized in the US House of Representatives in the hearing on Check 21 in April 8, 2003 at Washington DC showing the advantages and disadvantages of the implementation of Check 21 Act.

On the other hand, bankers in the USA agree that the electronic clearing has made a huge change in their every day work by:

- Protecting the consumer and giving him new rights;
- Accelerating banking transactions<sup>3</sup>.

*“We must ensure that our banking system operates as efficiently as possible, while preserving safety and soundness. Check 21 achieves these goals by improving our payment system and encouraging the electronic movement of checks across the country. At the same time, this bill protects consumers by ensuring that they have the ability to retrieve improperly debited funds and are given information on the operation of this new system”<sup>4</sup>.*

*“A typical check is processed several times before it is eventually paid. First, it is processed by the bank at which it is deposited. Then, it may be shipped for processing to one or more intermediaries, and finally it is shipped for processing and payment to the bank on which it is drawn. While most checks are currently processed in this fashion, some checks are removed from the collection process, and the payment information on the checks is captured and delivered electronically to the banks on which they are drawn. This process, which is commonly referred to as check truncation, reduces the number of times the checks must be physically processed and shipped. As a result, check truncation is generally more efficient, more cost-effective, and less prone to processing errors”<sup>5</sup>.*

*“Check 21 legislation would bring huge cost-savings for banks”<sup>6</sup>.*

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<sup>3</sup> Roger Ferguson, *US House of Representatives*, April 8, 2003, Washington, DC.  
<http://www.federalreserve.gov>

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

## **-C- Organization of the Study**

This study will consist of the following chapters.

### **Chapter one: Electronic check collection system**

The first chapter gives a detailed overview of the check 21 law allowing us to understand the way the collection is made, and the benefits that the electronic procedure in that field is offering to the USA.

### **Chapter two: The Lebanese collection system**

Chapter two provides an introduction to Lebanese Banking System along with a general overview of clearing, clearing houses, and tools needed in order to collect a check. It gives access to the procedures and steps that a check needs to follow to be finally collected.

### **Chapter three: Possibility of implementation of check collection system in Lebanon**

After having explained in chapter one the procedure through which the USA is collecting the checks, chapter three explores the ways of implementing the same collection procedures into the Lebanese banking system. This implementation will require the review of the Lebanese Banking Law and regulations. The aim of this chapter is to prove that the electronic collection will save time, money and paper work.

### **Chapter four: Conclusion and recommendations**

Chapter four will sum up the research findings and conclude remarks with general evaluations and recommendations.

# Chapter one: Electronic check collection system in the U.S.

## 1.1. History of the U.S. Banking Sector

1.1.1. The first American bank to issue bills in the US of America that could be converted into species was the Bank of North America in 1781. Many imitators came along and the number of banks in the U.S.A. grew from 6 in 1791 to 246 in 1816.

*“Frequently the only path to a banking charter was bribery or chicanery, particularly in the first decade of the nineteenth century, when economic growth was rapid and the number of banks small. The correspondingly high value of a banking charter escaped neither the politicians granting it nor the bankers seeking it, for both were generally merchants. The state received a bonus or loan at low interest; the legislators, financial support; and the bankers, the right to borrow from the public by issuing bank notes”<sup>7</sup>.*

At that time the banks needed a central bank to issue rules and regulations. The first U.S. Bank emerged in 1791 for a period of 20 years but could not last. So in 1816 the American Congress chartered a second U.S. Bank which also lasted for 20 years. Finally in 1913 a compromise led to the Federal Reserve Act which was supervised by the Federal Reserve Board and headquartered in Washington. The board was made of seven members including the secretary of the Treasury, the controller of the currency, and five members chosen by the President of the United States. In 1935 the powers of Federal Reserve Board were

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<sup>7</sup> Thomas Huertas. *The Regulation of Financial Institutions: A Historical Perspective on current issues*, Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1983, p.9.

extended in order to help the banks in facing the difficulties encountered in that specific period of time when banks failures were in huge numbers.

Between 1940 and 1980 banks began to merge with each other to raise their funds to offer bigger loans to multinational companies. Along with the mergers came the invention of computers in the 1950s which improved the banking procedures in such a faster way. “Since the establishment of the first commercial bank in the United States the Congress has enacted six major pieces of legislation affecting banking”<sup>8</sup>.

**1.1.2.** In the United States, as in most countries, banking is one of the most regulated industries. The purpose of this regulation is to achieve the following goals:

- To provide a safe and stable banking system;
- To establish a competitive banking and financial services industry;
- To ensure that bank loans are in conformance with social goals;
- To ensure fair treatment to bank customers;
- To provide an environment supportive to the Federal Reserve’s monetary policy.

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<sup>8</sup> Nicholas Lash. *Banking Laws and Regulations*, New Jersey Prentice-Hall, Inc., Englewood Cliffs, 1987, p.20.



## **1.2. The definition of the Check and its role in the American banking sector**

### **1.2.1. Definition of the Check**

“Check” means a draft, payable on demand and drawn on a bank. An instrument may be a check even though it is described on its face by another term, such as “money order”. Checks first made their appearance in the 15th century in Italy and in this nation their first use goes back to the 1680s. They did not become widely used in the U.S.A. till the middle of the nineteenth century when they began to be the dominant means of payment<sup>9</sup>.

In actual practice the check is an order of transferring a definite amount of money from a person to another through the bank which makes it a three-party instrument.

Nowadays, checking services are reliable, accurate and timely. It is a readily accepted means of funds transfer in most sectors of society. As such, it acts as a standard against which other payments systems are and will continue to be measured.

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<sup>9</sup> Ibid, p.161.



### **1.2.2. Check payment**

Once a check is deposited with a bank, it is almost always delivered overnight to the paying bank and debited from the check writer's account the next business day.

The payment of the check requires that the payor's bank transfer the amount of the check from the drawer to the payee. The payment occurs whenever the bank does any of the following:

- Pays the item in cash;
- Transmit the amount of the check to the bank of the person initiating the collection;
- Posts the item to the account of the drawer;
- Settles the item and fails to revoke the settlement in the allowed time and manner;
- The bank is expected to pay checks drawn by depositors when there are sufficient funds in their account. A wrongful refusal by the bank makes the bank responsible to the depositor for damages resulting from this refusal.

### **1.2.3. The role of checks in the American Banking Sector**

Writing a check is a common experience shared by many people in different countries of all backgrounds and income. According to the Federal Reserve Board's DFI check study the average American household writes 19 checks a month. In 1998, the Board of Governors of the Federal Reserve System said that nearly 90 percent (87 percent) of all U.S. households have a checking

account<sup>10</sup>. Overall check usage has increased 54 percent since 1979. The Federal Reserve estimates that in 2000, 42.5 billion checks were written in the United States accounting for nearly \$40 trillion. If you combine the value of checks and electronic payments in the United States, checks account for 84 percent of the total value<sup>11</sup>.

*“You have heard many points of view today on electronic money and banking. New products are being designed to challenge the use of currency and checks in millions of routine consumer transactions. Other new systems may allow payments or banking instructions to be sent over networks such as the Internet, which is unprecedented in providing versatile, low-cost communication capabilities. Yet in transactions initiated by consumers, paper--currency and checks--remains the payment system of choice”<sup>12</sup>.*

In fact, checks have evolved over the last 30 years to become more safe, reliable, efficient and consumer-friendly.

Over the last 30 years checks have evolved to become more secure for customers. Today, a variety of fraud prevention practices are working to prevent fraud including bank employee training, signature verification systems and the use of new account screening software.

The American Bankers Association in its 2002 Deposit Account Fraud Survey reported that large banks prevent more than 80 percent of check fraud cases.

Technology has also increased consumer protection. Checks are printed with a variety of security features that protect against alterations and duplication

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<sup>10</sup> Board of Governors of the Federal Reserve System, 1998, Survey of Consumer Finances for 1998, Washington DC: Federal Reserve System. <http://www.federalreserve.com>

<sup>11</sup> Federal Reserve Board, Retail Payments Research Project, 2001, Updated 2002. <http://www.federalreserve.com>

<sup>12</sup> Alan Greenspan. *The Future of Money in the Information Age*, US, Cato Institute, 1997, p. 108.

including micro-printing which makes reproducing checks by using laser printers and photocopiers more difficult; security-screened designs on the back of the check; and multi-stained security paper which prevents chemical alteration of names and amounts.

Although bombarded with advertisements and offers for electronic payments, a recent study by The Federal Reserve Bank of Chicago stated three key reasons why consumers find checks easy to use.

- First, nearly 90 percent of U.S. households have checking accounts;
- Second, checks are a widely accepted form of payment by merchants at the point of sale;
- Third, checks are the most popular payment method for paying bills because they are almost always accepted.

Consumers perceive checks to be low-cost payment instruments that give them greater control over timing and payments and lead to better budgeting. In short, consumers are comfortable with checks and are reluctant to change their payment habits<sup>13</sup>.

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<sup>13</sup> Sujit Chakravorti and Timothy McHugh. *Why do we use so many checks?* Federal Reserve Bank of Chicago, Economic Perspectives 30/2002.

### **1.3. The role of the Central Bank**

**1.3.1.** Central Banks are relatively new inventions. The American President Andrew Jackson cancelled the country's central bank in the nineteenth century thinking that it was not very important. But things have changed since. Central Banks today are the most important feature of the financial systems of most countries of the world.

Central Banks are bizarre hybrids. Some of their functions are identical to the functions of regular, commercial banks. Other functions are unique to the Central Bank. In relation, Central Banks take deposits from other banks and, in certain cases, from foreign governments which deposit their foreign exchange and gold reserves for safekeeping (for instance, with the Federal Reserve Bank of the USA). The Central Bank invests the foreign exchange reserves of the country while trying to maintain an investment portfolio similar to the trade composition of its client - the state<sup>14</sup>.

The Central Bank also holds onto the gold reserves of the country. The main function of a modern central bank is the monitoring and regulation of interest rates in the economy. The Central Bank does this by changing the interest rates that it charges on money that it lends to the banking system through its "discount windows". Interest rate is supposed to influence the level of economic activity in the economy<sup>15</sup>.

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<sup>14</sup> Heidi Mandaris Schooner. *Central banks' role in bank supervision in the United States and United Kingdom*, Brooklyn International Law Journal, 2003.

<sup>15</sup> The role of the Central Bank, 2000. <http://www.Palma.com>

Also, there usually is a delay between the alteration of interest rates and the foreseen impact on the economy. This makes assessment of the interest rate policy difficult. Still, central banks use interest rates to fine tune the economy<sup>16</sup>.

The reverse is also supposed to be true. Central banks are heavily involved in the fabric of the commercial banking system. They perform certain indispensable services for the latter. In most countries, inter-bank payments pass through the central bank or through a clearing organ which is somehow linked or reports to the central bank. All major foreign exchange transactions pass through - and, in many countries, still must be approved by - the central bank. Finally the central bank is the lender of last resort in cases of insolvency or illiquidity.

**1.3.2.** The Central Bank serves as a financial agent of the Treasury, provides a depository for public money, and acts as a regulator of the currency. The effectiveness of the Federal Reserve as a central bank was put to the test on September 11, 2001 as the terrorist attacks in New York, Washington, and Pennsylvania disrupted U.S. financial markets. The Fed issued a one-sentence statement reminiscent of its announcement in 1987. The Federal Reserve System is open and operating. The discount window is available to meet liquidity needs. In the days that followed, the Fed lowered interest rates and landed more than \$45 billion to financial institutions in order to provide stability to the U.S. economy. By the end of September, Fed lending had returned to pre-September 11 levels and a potential liquidity crush had been averted. The Fed played the pivotal role in dampening the effects of the September 11 attacks on U.S. financial markets.

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<sup>16</sup> Ibid.

The Federal Reserve faces many new challenges in the financial services industry: deregulation, technological advances in the payments system, the move to a more global economy, and continuing mergers and acquisitions in the banking industry. In late 2003, the Check Clearing for the 21st Century Act, known as Check 21 in the industry, was enacted. The coming years will assure that the use of “substitute checks”, paper reproductions of original checks are being processed just like the originals.

#### **1.4. The necessity to move from manual collection to an electronic one**

In the United States, in the 1960s and 1970s, significant concern was expressed regarding the ability of the banking system to handle the growing check volume which was increasing at a rate of approximately seven percent per annum, and the large number of banks which were spread over a very large area, so an efficient system for clearing the checks has to be made quickly. In fact the slow and inefficient state of check clearing was one of the reasons for the creation of the Federal Reserve System. The creation of the Federal Reserve System provided a major boost for the check collection system.

The opportunity for commercial banks to use this system for check clearing and other payments services reduced the necessity to maintain a complex network of correspondent balances.

##### **1.4.1. Definition of a Clearing house**

In most banks, clearings are found in the department responsible for processing checks. Proof and transit were once two separate functions in a bank.



proving the work (proof) and sending the out-of-town cash items for collection (transit).

In recent years, many banks have combined those two functions, which may be centralized or decentralized, manual or automated, depending upon the size of the bank and the volume of transactions. However, no matter who performs the function or how large the bank, the objectives of a proof and transit system is the same:

- To forward items for collection so that funds are available as soon as possible;
- To distribute all incoming checks and deposits to their destinations;
- To establish whether deposit totals balance with the totals shown on deposit tickets;
- To prove the totals of general ledger entries and other transactions;
- To collect data for computing the individual customer's service charges and determining the availability of customer's funds;
- To accomplish the assigned functions at the lowest possible cost.

When data processing systems are in use, it is common practice to post all properly encoded debit items, regardless of whether an overdraft is created. The resulting preliminary overdraft list, together with the items charged, is then reviewed by bank employees and unapproved items are reversed and separated as

bookkeepers' return items. The total of the resulting common practice is to post all properly encoded debit items, regardless of whether an overdraft is created<sup>17</sup>.

In normal daily operations, all banks have items which cannot be charged to individual accounts because of insufficient funds, no accounts, etc. Such items are commonly known returned items or rejected debits and may consist of checks received in the ordinary course of business, loan payments, ... In some banks, such items are separated and an entry is made reclassifying them to a separate asset account.

Other banks do not use a separate asset account, including the items in a subsidiary control account in the individual demand deposit ledgers. In that case, the account would have a debit balance and would be credited when the bank returns the checks to their sources.

A clearing house is a central check clearing association by which different member banks and financial institutions can each settle debit and credit balances with respect to other member institutions on a predetermined periodic basis and methods and systems by which the association is operable. The system and method is independent of conventional central bank district geographic and institutional boundaries and time zones.

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<sup>17</sup> Gary Gorton. *Clearing houses and the origin of central banking in the United States*, The Journal of Economic History, June 1985, p. 280.

### **1.4.2. Main functions of the clearing house**

All over the world almost all clearing houses have the same main functions. They are:

- Sending and receiving the checks by physically transporting them from financial institutions mainly banks to and from the clearing houses;
- Respecting the real time in correspondence with the occurrence of the collection:
  - a. The value of the checks transported;
  - b. The transport status of the checks with respect to their having been (i) sent and (ii) received;
  - c. Ways of payment of checks.

Manual systems are most prevalent in small institutions and rely on bank employees to collect data and maintain a written document.

The first automated clearinghouse was established in California in 1968 by approximately 100 participating banks<sup>18</sup>.

An automated clearing house allows payments to be made by magnetic tape rather than by paper check and they are all operated by the Federal Reserve.

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<sup>18</sup> [www.federalreserve.gov](http://www.federalreserve.gov)

### **1.4.3. The automated payment**

A system and method of collecting payments uses an automated system to generate a draft, payable to the creditor and drawn on the payor's checking account, pursuant to the payor's authorization. The draft is then executed by the debt collector as authorized signatory for the payor and deposited into the payee's account to complete payment. The automated system has a simple input screen which receives the necessary information for generation of the draft, which may be read to the system operator over the telephone by the authorizing payor. The system verifies the bank and account information by comparing the input information to records in a database associated with the system. Optionally, the system may also generate an inquiry to the bank to determine the availability of funds in the payor's account.

When verification is complete, the system generates a paper bank draft payable to the payor.

### **1.4.4. The Electronic payment**

The United States is in the midst of a significant shift away from the use of paper checks and toward the much greater use of electronic payments. This change is clearly evident in the Federal Reserve's recent payments research<sup>19</sup>, which shows that in 2003, for the first time ever, businesses and consumers made more payments electronically than by check. By contrast, only twenty-five years

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<sup>19</sup> Ibid.

ago the vast majority of consumer and business non cash payments were made by check.

The estimation is that the number of checks used in the United States peaked during the mid-1990s at around 50 billion per year. By 2003, the number of checks had fallen to around 37 billion. This decline is continuing. In contrast, electronic payments, such as payments made by credit and debit cards have tripled, from 15 billion in the mid-1990s to 45 billion in 2003<sup>20</sup>.

#### **1.4.5. The intervention between automated payment and electronic payment**

Manual systems are most prevalent in small institutions and rely on bank employees to collect data and maintain a written document. Since the data are generally required to be submitted to the regulatory agencies in electronic, machine-readable format, the data is manually entered into a data collection application through a data software entry.

Automated systems use one or more applications, developed in-house or by third-party vendors, for data collection and submission. In most cases, banks that are totally automated use fully integrated applications, that is, the applications work together to accomplish all of the tasks required. This might include separate systems for the collection of applicant information, geocoding and compilation of data as well as completing validity and quality checks against the data.

Combination systems involve both manual and automated characteristics and are generally the most complex and require the most oversight. Many times,

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<sup>20</sup> Ibid.

banks will use different systems for the various business lines. In these organizations, compliance personnel combine the document from each business line for submission.

This invention describes a combination of methods and apparatus that creates electronic money for personal transactions which integrates the functions of cash, checks and credit cards with constant surveillance against fraud. This money can also serve as an international medium-of-exchange, and support automated sales tax collections and payment.

This money's support system is comprised of personal terminals, vendor terminals, an electronic banking sub-system, and home base terminals. Such a system, if widely used, would increase commercial and personal productivity, provide better security against fraud and counterfeiting, facilitate the automation of operations that involve currency, and sharply diminish the flood of paper that threatens to inundate the present system<sup>21</sup>. Traditional means of payment have always had security problems, but now electronic payments retain the same drawbacks and add some risks.

Unlike paper, digital "documents" can be copied perfectly and arbitrarily often, digital signatures can be produced by anybody who knows the secret cryptographic key, and a buyer's name can be associated with every payment, eliminating the anonymity of cash. Without new security measures, widespread electronic commerce is not viable.

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<sup>21</sup> Norman Chasek. *Secure, automated transaction system that supports an electronic currency operating*, 1995. <http://www.findlaw.com>

On the other hand, properly designed electronic payment systems can actually provide better security than traditional means of payments, in addition to flexibility. This article provides an overview of electronic payment systems, focusing on issues related to security<sup>22</sup>.

## **1.5. Check 21 Act**

Check Clearing for the 21st Century Act or the Check 21 Act 2004

### **1.5.1. Introduction**

**1.5.1.1.** The banking industry received a rude awakening in the days following 9/11. With planes grounded, train service disrupted and heavy trucks waiting in long lines to be inspected as they passed through major metropolitan areas, the transportation of checks between banks came to a near-standstill.

Three years later, on Oct. 28, banks across the country implemented a system of giving electronically transmitted images of checks the same validity as paper checks. This move, industry experts say, should prevent future occurrences of the post-Sept. 11 check-processing gridlock<sup>23</sup>.

Check 21 allows you to make all your paper check deposits without ever leaving your office...

Check 21, passed into law on October 28th, 2003, allows businesses and financial institutions to convert paper checks into electronic images.

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<sup>22</sup> N. Asokan. *The state of the art in electronic payment systems*, Volume 30, Issue 9, Sep 1997, pp. 28 – 35.

<sup>23</sup> Brent Adams. *Indianapolis Business Journal*, November, 2004, p. 60.

Check 21 service gives you the convenience of converting paper checks to electronic (replacement) images. What does that mean? It means taking the paper checks received in your business as payment for your products or services, scanning those checks and from scanning, converting & uploading those paper checks to electronic images via an https secure web session.

Instead of the paper checks traveling through the banking system, the electronic images take their place and the paper checks are destroyed at your office.

Taking your check processing system from a manual process to an electronic process is easy to do. If you have a computer with an Internet connection, a check scanner (which is part of the offered service) and a domestic, US bank account, you can do it. There is no complicated set up or intimidating system to learn. It is as simple as 1-2-3. Scan checks, electronically submit your batch, and access your funds all from your office.

The first aim of the Check 21 Act is to facilitate the check transactions between Banks by using the substitute check instead of the real one in order to improve the efficiency of the Nation's payments system.

Check 21 is intended to accelerate the processing of checks by allowing banks to replace a physical check with an electronic image. Electronic check processing eliminates the dependency on physical modes of transportation and can greatly reduce the processing time required for a check to clear. Transactions that previously took days can now take minutes. That is why it is even more important to make sure your account balance is sufficient to cover any checks that you write.



The customer may not have time to deposit additional funds into his account after he writes a check. If he does not have sufficient funds in his account at the time that his check is presented for payment, he may incur insufficient fund charges to his account and his check may be returned unpaid<sup>24</sup>.

**1.5.1.2.** A thorough study was presented by the board responsible of the implementation of the Act and presented to the Congress before it was approved. The main idea found in the study was to present a full report on the following points:

1. The percentage of total checks cleared in which the paper check is not returned to the paying bank;
2. The extent to which banks make funds available to consumers for local and non local checks prior to the expiration of maximum hold periods;
3. The length of time within which depository banks learn of the nonpayment of local and nonlocal checks;
4. The increase or decrease in check-related losses over the study period;
5. The amount of operating costs attributable to the transportation of commercial checks between Federal Reserve Bank processing centers<sup>25</sup>.

### **1.5.2. The purposes of Check 21 Act**

Check 21, is a new federal banking regulation, which was created to:

- Eliminate daily trips to the bank to make check deposits;
- Eliminate expensive courier services to transport your checks;

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<sup>24</sup> Check 21 Act 2004. Section 1, Introduction. 2004. <http://www.federalreserve.gov>

<sup>25</sup> Ibid. Section 16, Study and Report of funds availability.

- Reduce labor costs associated with manually processing and depositing checks;
- Improved Cash Flow. Get access to funds within 48-72 hours;
- Funds automatically deposited to your business checking account;
- Automatically resubmit NSF items on the time and day you choose;
- Easier collection;
- Cash concentration for multi-location or multi-branch operations, each location can scan checks remotely.
- Funds deposited to corporate account;
- No need to maintain separate checking accounts;
- Reduce check fraud by getting faster notice of returned checks;
- Automated data files allows for easy import to your accounts receivable system;
- Storage & logistics – All check data and images are stored on secure servers to enable the client to have access to all data 24 hours a day;
- Improved banking relationship - consolidated deposits can provide the grounds for an overall improved relationship with your bank;
- Advanced check scanning hardware available for any size check processing volume;
- Comprehensive Online Reporting. Review & download real-time and historical customer data;
- Highly secure web-based system;

- Reduce the time and risks associated with paper check processing;
- Allow banks to send digital images of checks electronically, eliminating the need to physically transport paper checks between banks;
- Create a new legal document, called the “substitute check”, which can be used for any reason that might require an original cancelled check;
- Reduce legal barriers to the use of electronic imaging and networking technologies to collect checks and to return those that are not paid. Specifically, state laws governing check collection allow banks to demand that the original checks be physically presented for payment.

Although state laws typically allow banks to agree to alternative presentment arrangements, the large number of banks in the United States has made the widespread adoption of electronic check collection through industry agreements extremely difficult.

- Improve the efficiency of the U.S. payment system<sup>26</sup>.

### **1.5.3. The Congress conditions for approval on Check 21 Act**

In order to approve the implementation of the Check 21 Act the Congress recommended the following:

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<sup>26</sup> Ibid. Section 2, Findings, Purposes.

- The congress directed the Board of Governors of the Federal Reserve System to consider establishing new regulations to rule over litigations;
- Provide the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the new payment system including the receipt, payment, collection and clearing of checks along with all related functions of the payment system pertaining to checks;
- The exercise of such authority by the Board of Governors supersedes any State Law, including the Uniform Commercial Code, as in effect in any State;
- The Congress approval aims to improve the overall efficiency of the Nation's payment system.

#### **1.5.4. The Parties included in the Act**

In order to pay a check several parties should interfere in the collection:

- **The consumer** is the person presenting the check for collection in the collecting bank;
- **The collecting bank** is any bank handling the check;
- **The customer** is the person holding the account at the paying bank from which the check is going to be withdrawn;
- **The paying bank** is the bank responsible for the payment of the check sent by the collecting bank<sup>27</sup>.

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<sup>27</sup> Ibid. Section 3, Definitions.

### **1.5.5. The substitute check**

The substitute check is a reproduction of the original check and contains:

- An image of the front and back of the original check;
- Bears an MICR line containing all the information appearing on the MICR line of the original check;
- Conforms the dimension of the original check;
- Is suitable for automated processing in the same manner as the original check;
- Bears the legend: This is a legal copy of your check. You can use it the same way you would use the original check;
- The substitute check is legally equivalent to an original check for all purposes as long as it represents all the information on the front and back of the original check. The Bank also should ensure the correct endorsement of the check<sup>28</sup>.

### **1.5.6. The substitute check warranties**

While Check 21 does not mandate that checks be presented electronically or change a bank's right to demand original paper check, it does facilitate the adoption of check truncation and electronic collection of checks through the action of market forces.

When the paying bank does not agree to receive checks electronically and demands that presentment be made by paper checks, Check 21 allows the other

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<sup>28</sup> Ibid. Section 4, General Provisions governing substitute checks.

banks to create and present paper substitute checks that are legally equivalent to the original checks.

As banks increasingly send and receive checks electronically, this new authority will reduce the handling of paper checks and enable banks to reduce their paper-check infrastructure more easily.

It also will reduce the number of checks that must be flown or driven around the country to be collected or returned, which reduces transportation and other operating expenses. Of course, each bank will determine for itself which makes good business sense: adopting new technologies for sending and receiving checks electronically or continuing to demand paper.

The most noticeable changes occurring because of this regulation will include the speed with which customer's checks will clear his account and, if clients receive checks or images back in their statements, the possible appearance of substitute checks in your monthly account statement. The "Check Clearing for the 21st Century Act", commonly known as "Check 21", became effective on October 28, 2004. Check 21 accomplishes this by allowing original paper checks to be removed from the check collection process, processed in electronic form and later replaced with a new kind of paper document, called the "substitute checks".

#### **1.5.7. Indemnity**

The Bank holds the obligation to pay an indemnity to any of the other parties due to any loss incurred if that loss occurred due to the receipt of a substitute check instead of the original one.

#### 1.5.7.1. Indemnity amount

- Amount in event of breach of warranty: The indemnity amount shall be the amount of any loss approximately caused by the breach of warranty;
- Amount in absence of breach of warranty: In the absence of a breach of warranty, the amount of the indemnity shall be the sum of the amount of the substitute check plus the interests and expenses.

#### 1.5.7.2. Negligence

If the loss results in whole or in part from the negligence or failure of acting in good faith then the party responsible of the negligence will pay in proportion of his negligence the amount of the indemnity<sup>29</sup>.

### **1.5.8. Expedited recredit for consumers**

#### 1.5.8.1. Recredit claims with a -40- day period

A consumer can make a claim for a recredit from the bank that holds his account if he asserts his good faith and before the end of the -40- days period beginning from the date he received his statement of account or from the date he received the substitute check.

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<sup>29</sup> Ibid. Section 6, Indemnity.

#### **1.5.8.2. Claims procedures**

To make a claim for a recredit, the consumer shall provide the bank that holds the account:

- A description of the claim;
- A statement showing the loss of the estimated amount;
- Sufficient information to identify the substitute check and to investigate the claim;
- The claim should be presented in general in writing or electronically if the consumer agrees to communicate with the bank in that manner.

#### **1.5.8.3. Timing of recredit**

In general the bank shall recredit the consumer's account not later than the end of the business day following the business day on which the bank determines that the consumer's claim is valid.

#### **1.5.8.4. Prevention of fraud losses**

If the bank has reasonable cause to believe that the claim is fraudulent based on facts, than it will be discharged of the recredit.

#### **1.5.8.5. Notice to consumer**

If the bank proves that the claim is not valid, the bank shall send to the consumer not later than the business day following the business day on which the bank made his determination:



- The original check or a copy of it including the front and back of the check,;
- An explanation determining on which basis the bank considers that the substitute check was properly charged.

#### 1.5.8.6. Expedited recredit procedures between banks within -120- day period

In general a bank puts a claim against an indemnifying bank for an expected recredit:

- If he received a claim from his customer;
- If the bank suffered a loss or was obliged to recredit his customer.

The claiming bank should present its claim not later than the end of -120- day period beginning on the date of the transaction made.

In order to make a claim there are some procedures to be followed, the claimant bank should send to the indemnifying bank:

- A description of the claim explaining why the substitute check cannot be charged;
- A statement showing the loss that the claimant bank has suffered,
- The reason behind the claim of having the original check;
- The claim should be presented in writing unless the claimant bank approves to submit it electronically;

- The indemnifying bank should provide the claimant bank the original check, recredit or refuse to do it not later than 10 days from receiving the claim<sup>30</sup>.

A delay by a Bank beyond the time limits prescribed by this Act shall be excused if it is caused by:

- Interruption of communication or computer facilities;
- Suspension of payments by another bank;
- War;
- Emergency conditions;
- Failure of equipment.

#### **1.5.9. Consumer Awareness**

Each bank has the obligation to provide a brief notice about substitute checks to its customers describing:

- How a substitute check can be equivalent to the original one for all purposes if it represents accurately all the information on the front and back of the original check and only if it bears the legend “This is a legal copy of your check. You can use it in the same way you would use the original check”;
- The consumer's recredits rights if that substitute check was not properly charged to his account;

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<sup>30</sup> Ibid. Section 8, Expedited Recredit Procedures for Banks.

- For existing customers the bank should provide the notice related to the substitute check on the first communication between the bank and the consumer;
- For new accounts, the bank should provide the notice when the customer relationship with the bank is initiated.

The bank may send the notices by mail or by any other means agreed upon between the bank and the customer related to the account information<sup>31</sup>.

### **1.6. Changes inside Banks (financially and managerially)**

For the banking industry to realize the vision for the nation's check-collection system laid out in check 21 Act, additional steps must be taken. For example, software vendors and third-party check processors need to adapt their systems to support the creation of substitute checks and the exchange of digital check images. As these systems become more prevalent, additional banks will invest in them.

Once banks make these investments, however, they will have to adjust their operations to make the best use of the new technologies. They also will need to verify that their updated systems are compatible with those of other banks and will permit them to exchange checks electronically.

As banks improve their technological capabilities, they can reduce their reliance on air and ground transportation, especially shared transportation arrangements. The banks that remain tied to paper checks will continue to bear the

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<sup>31</sup> Ibid. Section 12, Consumer Awareness.

costs of those arrangements. As a result, I believe pressures to reduce check transportation costs will be an important determinant of the pace at which banks make the transition to electronic check collection.

The Federal Reserve Banks have long been at the forefront of encouraging the electronic collection of checks. As a result, even before check 21 Act became law, one out of every five checks collected through the Federal Reserve Banks was being presented electronically.

The Reserve Banks also have been leaders within the payments industry in making use of the authority granted by check 21 Act. They began offering check 21 services as soon as the law became effective. These services allow for the acceptance of digital check images for deposit and the truncation of some large-dollar paper-check deposits, which are then transmitted to the Reserve Bank closest to the paying bank, thereby eliminating the need to transport physically paper checks between the Reserve Banks.

The receiving Reserve Bank then prints substitute checks from the check images to present them to the paying bank, or provides electronic information to paying banks that already accept the presentment of checks electronically.

Although all types of depository institutions are among the initial Reserve Bank customers for these services, the volumes are still relatively small. The operational and technical preparations and testing requirements necessary to use these new payments services naturally limit the pace at which banks can take advantage of them. Out of the approximately 50 million checks that the Reserve Banks collect each business day, only 400,000, or less than 1 percent, involve the

deposit of digital check images with the Reserve Banks or the printing of substitute checks to present to the paying bank.

Looking across the entire banking industry, some banks, both large and small, have begun to take advantage of the opportunities created by Check 21. For the most part, they have done so within the context of cooperative agreements, through third-party processors, or, by sending check images to the Federal Reserve Banks. The banking industry's efforts are generally less extensive, at this time, than those of the Federal Reserve Banks. Though checks will still be written, it is expected that their number will be substantially lower and that most will be collected electronically.

In summary, the payments system in the United States is continuing to change and is becoming increasingly efficient. However, the shift away from the use of paper checks does create challenges for the banking industry and the Federal Reserve Banks.

To address these challenges, over the coming years the industry will be making important decisions about how best to incorporate the greater use of electronics into their payments operations while reducing their paper check-processing infrastructures.

### **1.7. Regulations amended for Check 21**

New regulations were issued to ensure that Check 21 covers the entire range of check processing services that the Reserve Banks will offer under it. The amendments bring electronic items within the coverage of the new regulations,

and establish new warranties and indemnities that apply to electronic items handled by a Reserve Bank. Electronic check processing is not new to the financial industry and is a safe and reliable way of processing payments. It uses technology that has been developed and tested to process check information securely. Check 21 does not require customers to stop receiving checks back in their account statements.

The contents of an account statement will continue to be governed by the account agreement between the bank and its customer. Rather, when banks have agreed to provide paid checks in statements, Check 21 permits the bank to provide either the original check or a substitute. Another federal check law (the Expedited Funds Availability Act) specifies the maximum times by which your bank must make funds available to you, though most banks make funds available faster than required.

Check 21 did not change these maximum hold times. However, the Expedited Funds Availability Act requires the Federal Reserve Board to reduce maximum hold times in step with reductions in actual check-processing times. Thus, over the longer term, if Check 21 sufficiently increases the speed of check processing, the Board will reduce maximum hold times.

A bank's decision to place a hold on funds deposited by check does not affect the interest received on the deposited funds. Specifically, if a check is deposited into an interest bearing checking account, the bank is generally required to begin to credit interest to the account no later than the business day on which the bank receives credit for the funds.

## **Chapter two: The Lebanese collection system**

In the previous chapter, we overviewed the American collection system but in this chapter we will explore briefly the Lebanese Banking system and its main characteristics and the collection system in a deeper way. We will focus on the manner that a check is being collected on the time being, with shedding a little light on some new ideas of collection proposed by the committee for banking technologies. Moreover we will show the special role that Banque Du Liban plays in the check collection system in Lebanon.

### **2.1. The Lebanese Banking System.**

The Lebanese banking system is very liberal. There is no restriction on the movement of currency and capital, no exchange control, currency is totally convertible and banking secrecy is strictly applied. A law against money-laundering has recently been added. This total freedom for private investors may explain with no doubt the development of the banking sector and its weight in the Lebanese economy.

For decades, Lebanese banks have played the role of refuge for Arab capital which fled the nationalization programs in neighboring countries (Syria, Iraq, Egypt) and even if the Lebanese War and the development of the banking sector in other areas (Amman, Manama, Dubai) have reduced the importance of this sector, the banking secrecy laws and the skill of the Lebanese executives continues to attract business.

In Lebanon there is a large number of banks which explains without a doubt the fact that Lebanese banks have a limited size compared with other banks in the region: none of them is to be found among the 10 leading Arab banks and only 5 are to be found among the top 100 (Blom, Banque de la Méditerranée, Banque Audi, Banque Byblos, and Fransabank). The Bank of Lebanon (Central Bank) does, however, encourage groupings between banks so as to enable them to better face up to regional competition. The liberal system in force in the sector has, as a further consequence, a large foreign presence, in particular French banks (Société Générale, BNP Paribas, Crédit Agricole, CIC).

## **2.2. The main characteristics of the Lebanese Banking System**

The Lebanese banking system is endowed with several characteristics that promote the role of Beirut as a regional financial center, in terms of ensuring protection for foreign capital and earnings.

### **2.2.1. Free Exchange System and Free Movement of Capital and Earnings**

The Lebanese currency is fully convertible and can be exchanged freely with any other currency. Moreover, no restrictions are put on the free flow of capital and earnings into and out of the Lebanese economy.

### **2.2.2. The Banking Secrecy Law**

The passing of the banking secrecy law on September 3rd 1956 subjected all banks established in Lebanon as well as foreign banks' branches to apply this law. All banks managers and employees who are exposed to the banks activities,



cannot reveal what they know concerning their clients names, assets or holdings to any party whatsoever whether individuals or public authority, be it administrative, military or judicial. Such information is released only when granted written authorization by the client or his/her heirs, in case of bankruptcy, or in case of any litigation between the bank and the client.

The law however, in order to ensure the security of banks' investments, allows for mutual communication among banks, and under the provision of bank secrecy, of information related to the debtor accounts of their clients. Moreover, in case of request presented by the judicial authorities for cases of illicit accumulation of wealth, banks cannot refrain from revealing the necessary information.

### **2.2.3. Tax Exemptions**

Both article 16 of law No. 282 dated December 30, 1993 and article 12 of decree No. 5451 dated August 26, 1994, offered exemptions from income tax on all interest and revenues earned on all types of accounts opened in Lebanese banks, but this exemption does no longer exist and a 5% tax is being taken on all interests revenues for both Lebanese and foreign deposits.

### **2.2.4. The Free Banking Zone**

On the first of April 1975, decree No. 29 established a free banking zone by granting the Lebanese government the right to exempt non residents' deposits and liabilities in foreign currency from:

- The income tax on interest earned;

- The required reserves imposed by the Banque Du Liban by virtue of article 76 of the Code of Money and Credit;
- The premium of deposit guarantee imposed on bank deposits to the profit of the National Deposit Guarantee Institution.

#### **2.2.5. Opening of Joint Accounts**

The law of December 1961 allows for the opening of joint accounts. These accounts are opened in the name of several persons and can be used by any one of these persons. In case of death of any one of the account owners, his/her partner can use the account without being subject to heirs procedures.

In case one of the account holders is declared bankrupt, the account becomes the ownership of the bankrupt party, unless it is proven otherwise. The bank can't do any clearing for the different accounts of any account holder without the written approval of all other partners.

The lifting of bank secrecy on the account is non operational without it being declared by all partners. In case of any litigation among the different holders of the account, the bank shall freeze the account from the day it receives notification of the litigation and until it is settled by the courts.

#### **2.2.6. Money Laundering**

Lebanon has been aware of the necessity to combat money laundering particularly because the banking secrecy law could be used as a means for such illegal operations. Due to this and with respect to the banking secrecy law, the Association of Banks in Lebanon (ABL) set a Due Diligence Convention which

was signed by the member banks. This convention aims to prevent money laundering operations.

### **2.3. The Globalization in the Lebanese Banking Sector**

The Lebanese banking sector has developed and became up to date with the international banking sectors. This came as the result of the continuous effort made by Lebanon to modernize its banking laws and regulations, in the light of the recommendations of Basel committee and the directives of the International Monetary Fund and other international organizations.

The Banque du Liban intended for Lebanon to engage in globalization while preserving the particularity of the country and its banking sector. It held on to the banking secrecy and achieved openness without weakening the Lebanese banks. We also bolstered trust in our banking sector through a pragmatic treatment of problematic banks. During a period of eight years, 23 bank licenses have been canceled, and a quality re-capitalization of nearly 5 banks has been performed. Lebanon has achieved all these operations without inducing any loss to the persons dealing with these banks, and without any crisis incurred in our banking. In this respect, Lebanon approved the law of share appropriation. It liberated share circulation from any restraint or endorsement with the exception of one person's or one group ownership not to exceed 5% of the whole shares of the bank.

The crimes of money laundering were defined as proceeds of terrorism, drugs and robberies. This law preserves the reputation of Lebanon and doesn't hinder business through the banking sector.

This law constitutes the best protection for the banking secrecy law since it empowers a committee headed by the Governor of the Banque du Liban to lift the bank's secrecy on the crimes specified in this law exclusively. Banking secrecy is the rule and its removal is the exception. Moreover, this law allowed taking the pressures off the banking secrecy in Lebanon which allegedly hinders investigations related to the crimes of money laundering.

#### **2.4. The Committee for Banking Technologies**

In accordance with Article 174 of the Code of Money and Credit, a special committee was formed by the Central Bank and the Association of Banks in Lebanon for improving, with the help of new technologies, the efficiency of the Lebanese banking system and the standardization of its activities.

The Committee for Banking Technologies of the Banque Du Liban is composed of:

- The first Vice Governor as President;
- The fourth Vice Governor as Vice President;
- The director of Legal Affairs Department as Member;
- The director of Information Technology Department as Member;
- Two representatives from the Association of Banks in Lebanon as Members;
- The General Secretary of the Association of Banks in Lebanon as Member.

### **2.4.1. Main Functions of the Committee**

The main functions of this Committee are:

- To study new banking technologies and plan for their implementation;
- To examine methods for developing the Exchange and Payment Systems in Lebanon (Checks, Cards, ATMs...);
- To consider the adoption of new techniques regarding the work of the financial and secondary markets;
- To prepare a study on the setting up of a special communication network that would directly link all banks operating in Lebanon;
- To extend the use of the S.W.I.F.T. system to include new services; and
- To prepare training programs for the staff involved in those activities.

### **2.5. The role of Banque Du Liban in the collection**

2.5.1. The purpose of creating the clearing houses in the BDL head office and its branches is to facilitate the exchange of checks for collection between banks through daily clearing. The payment of the checks exchanged is made through banks accounts at BDL in each currency apart<sup>32</sup>.

All banks working on the Lebanese territory should register at the clearing houses created by BDL and should be present at all clearing sessions whether they

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<sup>32</sup> Clearing Houses in Banque Du Liban dated 1994. Article 1. <<http://www.bdl.gov.lb>>

took place at BDL head office or at its branches<sup>33</sup>. The clearing sessions are managed by two BDL officers: one responsible of the managerial work and the other one for the technical work<sup>34</sup>.

Every bank assigns two representatives to attend the clearing sessions on its behalf: an official one and an alternative one. Banks inform each others and BDL of the names and signatures of the representatives. The representatives have the obligation to attend to all clearing sessions and to be present at the opening and should stay till the closing of the session.

Nobody other than the assigned representatives is allowed to be present at the clearing sessions. In case of unsatisfactory behavior from the representatives the BDL officer has the right to ask the bank to replace them<sup>35</sup>.

Places inside the clearing rooms are distributed according to the serial numbers on BDL's banks list<sup>36</sup>. Clearing sessions are held daily. At the opening of the session every bank's representative hands over two floppies with a memorandum stating its name and its number, example: (Byblos Bank S.A.L. # 39 on the bank's list). The floppies contain the following items:

- Bank's name, number and session's date;
- The number and amount of checks delivered in Lebanese pounds and foreign currencies;
- The number and amount of returned unpaid checks both in Lebanese pounds and foreign currencies.

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<sup>33</sup> Ibid. Article 2.

<sup>34</sup> Ibid. Article 3.

<sup>35</sup> Ibid. Article 4.

<sup>36</sup> Ibid. Article 5.

BDL refuses to accept the floppies from the Bank's representatives in case they showed up late and would not be allowed to exchange their bank's checks with other representatives<sup>37</sup>. At the end of the session, BDL delivers back two floppies to the representatives containing the final results of the last session and the preliminary results of the same day session<sup>38</sup>.

Before the final execution of the clearing session, the checks stay within the property of the Banks to enable them to give them back to the clearing houses upon their request. Once Banks decide to register in the clearing houses, they give the authority to BDL to withdraw the amount of their checks from their accounts at BDL according to each currency<sup>39</sup>.

In case one of the bank's representatives did not attend the session, all the checks related to his bank will be considered as paid without having the right to return them back<sup>40</sup>.

Banks should advise each other before the opening of the clearing session of any check returned with a big amount in order to enable the other bank to deposit the amount in its account at the Central Bank<sup>41</sup>. Every bank should close the debtor balance in its account within one hour from the opening time of the session<sup>42</sup>.

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<sup>37</sup> Ibid. Article 6.

<sup>38</sup> Ibid. Article 7.

<sup>39</sup> Ibid. Article 8.

<sup>40</sup> Ibid. Article 9.

<sup>41</sup> Ibid. Article 10.

<sup>42</sup> Ibid. Article 11.

All checks have to bear on their back the name of the bank and the clearing date<sup>43</sup>. The banks have a two days period to return the unpaid checks<sup>44</sup>.

The penalties for the breach of the above mentioned conditions are the following:

- 200000 LBP for the late arrival of the representative at the session;
- 200000 LBP if the representative leaves before the end the session;
- 200000 LBP for every mistake found in the floppies;
- 200000 LBP for every mistake made in the sum or the number of checks;
- 1000000 LBP in case the representative does not show at all;
- 2000000 LBP for every mistake that can cause the delay or cancellation of the session<sup>45</sup>.

BDL is not responsible for the loss of any item and every representative has the obligation to check all his items before leaving the session<sup>46</sup>. The transfers are collected between banks in the same way as checks are<sup>47</sup>.

The banks are penalized for every failure in their obligations against BDL<sup>48</sup>. Every bank pays fees according to the number of operations made at the clearing houses<sup>49</sup>.

**2.5.2.** In line with technological developments throughout the world, the Central Bank issued Basic Decision No. 7548 dated 30 March 2000 to define

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<sup>43</sup> Ibid. Article 14.

<sup>44</sup> Ibid. Article 15.

<sup>45</sup> Ibid. Article 16.

<sup>46</sup> Ibid. Article 17.

<sup>47</sup> Ibid. Article 18.

<sup>48</sup> Ibid. Article 19.

<sup>49</sup> Ibid. Article 20.



electronic banking and financial operations undertaken by banks, financial institutions, financial intermediaries, mutual funds or any other similar entity operating in Lebanon. Any bank, financial institution, financial intermediary, mutual fund or any other institution supervised by the BDL that wishes to conduct any of its previously approved activities through electronic means needs to notify the central bank. These entities should comply with norms of transparency, integrity and security.

Checks in LBP and in foreign currencies (USD, GBP, and Euro) are cleared through a single system, the BDL Clearing Houses. These are established at the BDL's head office in Beirut and at six of its nine branches, namely in Jounieh, Tripoli, Zahlé, Saida, Tyre and Nabatiyeh.

All banks on which checks are drawn (foreign and domestic banks and the BDL itself) should participate in the Clearing Houses and must hold an account with the BDL as per Basic Decision No. 6911 dated 26 February 1998. The costs of operating the Clearing Houses vary and are covered by the participating banks.

### **2.5.3. Checks are cleared and settled in the following manner:**

#### **2.5.3.1. At bank level**

- At the end of every working day, each bank tallies all the checks presented and drawn on other banks;
- The checks are passed through the reader/sorter and currency codes and amounts are recorded (post-marking);
- Checks are classified and sorted by currency and by drawee bank;

- The bank prepares a checklist for each other bank specifying the value and number of checks drawn on that bank, with the corresponding checks attached to it;
- Another checklist, the control table, is prepared with eight items:
  - The value of checks to be collected during the clearing session as credit and the checks to be paid as debit;
  - The preliminary net credit/debit position;
  - The value of the checks returned to the other banks as credit;
  - The value of the returned checks received from the other banks as debit;
  - The total credits;
  - The total debits;
  - The final net credit/debit position;
  - Banks' representatives calculate the preliminary and the final net credit/debit positions and confirm them to the Clearing House Officer.
- All the information describing the checks to be collected from each bank is copied onto a floppy disk and printed out in the form of a statement.

#### 2.5.3.2. First and preliminary session:

- The next day the banks' representatives meet at one of the Clearing Houses;
- The staff of the Clearing House receives the floppies with the attached statement from the representatives, read and copy the information, and book the transactions to the respective banks;

- During this session, the representatives exchange the checks and the corresponding checklists they have prepared the day before showing the value of the checks drawn on each of their banks;
- After receiving the afore mentioned checklist, every representative calculates the value of the checks drawn on his bank and checks them against that list;
- The staff of the Clearing House hands over a statement for every bank showing its debit position, credit position and net debit/credit position;
- Every position is checked by the representatives to ascertain whether or not it confirms the value calculated in the checklists and to make adjustments for any mistakes;
- Members' net balances are kept and saved in the system until the second and final session;
- Each representative presents the checks drawn on his bank to his bank for confirmation before funds are withdrawn from customers' accounts. If a check is dishonored for any reason, it will be returned to the sending bank during the second and final session on the next day.

#### 2.5.3.3. Second and final session:

- During this session, only returned checks are exchanged between banks' representatives following the same procedure as in the first session;

- The account of the sending bank will be debited and that of the bank that refused the check will be credited with the amount of the check. The BDL records only the net debit/credit position for each bank, and obligations are settled via the accounts held at the BDL;
- After the second and final session, account entries and settlement become final and irrevocable. If no returned checks are exchanged during the second and final session, banks already know their net credit position during the preliminary session, but the value date is that of the final session. Only then are Clearing House balances settled over accounts at the BDL.

According to the Clearing House rules, banks in a net debit position are asked to supply their accounts at BDL with the sufficient funds during a period not exceeding the end of the final session where the debit position must be posted.

## **2.6. Decision no. 7548 on Electronic Financial and Banking Transactions**

Pursuant to the provisions of the Code of Money and Credit, especially the provisions of Articles 70 and 174, to the provisions of Law 133 of October 26, 1999, and to the Decision of the Central Council of the Banque Du Liban, taken in its meeting of March 29, 2000, the Governor of the Bank of Lebanon decides the following:

For the purpose of implementing the provisions of this Decision, all operations and activities that are concluded, carried out, or promoted through electronic or photo-electric means (telephone, computer, Internet, ATM, etc.) by

banks, financial institutions, financial intermediaries, mutual funds, or any other institution or entity shall be considered as **electronic financial and banking transactions**.

This definition applies equally to operations undertaken by issuers or promoters of payment and credit cards and by institutions involved in electronic transfers. It also applies to institutions involved in offer, purchase and sale operations, and in the provision of other electronic services related to financial instruments, as well as to their settlement and compensation centers<sup>50</sup>.

Any entity that undertakes **electronic financial and banking transactions** should follow principles of honesty, integrity and transparency, adopt adequate procedures for ensuring maximum security, and take all necessary measures to define and restrict various responsibilities<sup>51</sup>.

In undertaking **electronic financial and banking transactions**, any authorized entity is subjected to the following conditions:

- Banks and other institutions officially registered with the Banque du Liban or operating under its supervision, with the exception of money changers, must inform the Central Bank in advance of their intention to carry out, partly or entirely, their authorized activities through any of the various electronic means;
- Lebanese institutions other than those specified in Paragraph 1 of this Article, including money changers, must obtain in advance,

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<sup>50</sup> Clearing Houses in Banque Du Liban. Decision no.7548 on Electronic Financial & Banking Transactions. Article 1. <http://www.bdl.gov.lb>

<sup>51</sup> Ibid. Article 2.

from the Banque Du Liban, an authorization to undertake any of the activities specified in Article 1 of this Decision;

- When targeting their operations or service offers at the public in Lebanon, foreign institutions or their branches must obtain in advance, from the Banque du Liban, an authorization to undertake any of the activities specified in Article 1 of this Decision<sup>52</sup>.

When dealing with money electronic transfers, institutions established in Lebanon and referred to in Article 3, par. 2 and 3, must meet the following conditions:

1. As regards transfers in Lebanon:

- a. To have a capital of two billion Lebanese pounds or, in the case of a foreign institution, to allocate a similar amount to the operations of its branch in Lebanon;
- b. To inform the Banque du Liban about the number and addresses of branches opened in Lebanon, and about the transfer equipment in use in each location; and to comply with the content of any objection by the Banque du Liban concerning these branches, at the risk of losing its license to operate in Lebanon;
- c. To comply with professional confidentiality;
- d. To buy insurance on its operations;
- e. To provide evidence on the effectiveness of its electronic protection system.

2. As regards transfers abroad:

- a. To be connected to an international transfer network;

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<sup>52</sup> Ibid. Article 3.

- b. To comply with subparagraphs (b), (c), (d) and (e) of Paragraph 1 of this Article<sup>53</sup>.

Institutions that install and operate ATMs must comply with all relevant rules and regulations issued by the Banque du Liban<sup>54</sup>.

Unless otherwise stipulated, **electronic financial and banking transactions** and institutions handling them are subjected to the laws, rules and regulations that govern the said institutions or the said transactions, when carried out with traditional, non-electronic means<sup>55</sup>.

Institutions which establish electronic centers to deal with stocks and other financial instruments, or which undertake to pay the relevant yields and profits must comply with BDL regulations concerning financial intermediaries, of which mainly the allocation of a minimum operating capital<sup>56</sup>.

In addition to the general principles stipulated by Article 2 of this Decision, the following conditions must be met:

1. The client should be at least eighteen years old, with full contractual capacity;
2. With due consideration to laws in force, no information should be given about the client's account without his/her prior and unequivocal, written permission.

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<sup>53</sup> Ibid. Article 4.

<sup>54</sup> Ibid. Article 5.

<sup>55</sup> Ibid. Article 6.

<sup>56</sup> Ibid. Article 7.

3. Digital signatures are accepted only when they meet the following conditions: There should be a clear agreement between the concerned parties.
- The signatory should use a personal identification code;
  - The institution implementing the transaction should confirm it within 24 hours by electronic mail, and within one week by surface mail, unless the client requests his/her mail to be kept with the said institution;
  - The implementing institution should provide the client with a detailed monthly statement of account, to be sent to an address of his/her choice.
4. The ceiling on aggregate credits extended through electronic means by a single institution to one real or moral person shall not exceed 20% of its own funds. In this respect, banks continue to be governed by BDL regulations concerning the ceilings on their credit facilities.
5. The concerned institution shall indicate on its electronic site:
- a. Its registration number at the Banque du Liban, in the case of institutions specified in Article 3, par. 1;
  - b. The date of the authorization (and its number, if available) granted by the Banque du Liban to undertake operations covered by this Decision, in the case of institutions specified in Article 3, par. 2 and 3<sup>57</sup>.

The institutions specified in Article 3 of this Decision shall:

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<sup>57</sup> Ibid. Article 8.



1. Facilitate control operations on their activities by the Banque du Liban or the Banking Control Commission, including technical control;
2. Inform the Banque du Liban about their operation's system and its technical basis, and about any modification in this respect;
3. Request their auditors to prepare semi-annual reports on their electronic banking operations and on their technical and organizational status, with copies to be sent each year, by end-March and end-September, to the Banque du Liban and the Banking Control Commission<sup>58</sup>.

Institutions among those specified in Article 3, par. 1, which are undertaking operations regulated by this Decision, shall start to enforce the provisions of the said Decision within a period of six months. They shall inform the Central Bank about the measures taken for this purpose and submit to the Bank the required documents.

Institutions specified in Article 3, par. 2 and 3, which are undertaking operations regulated by this Decision without the authorization of the Banque du Liban, must regularize their position within a period of six months<sup>59</sup>.

The administrative penalties stipulated by the laws and regulations in force shall apply to violations of the provisions of this Decision<sup>60</sup>. This Decision shall enter into force from the date of its publication in the Official Gazette<sup>61</sup>.

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<sup>58</sup> Ibid. Article 9.

<sup>59</sup> Ibid. Article 10.

<sup>60</sup> Ibid. Article 11.

<sup>61</sup> Ibid. Article 12.

## **2.7. The creation of a Commission for Developing and Modernizing Financial and Banking Laws**

The financial sector is a major sector of the Lebanese economy. It absorbs a sizable fraction of the labor force and makes a significant, direct and indirect (by providing finance), contribution to GDP growth. It also plays an important role in attracting resources from the rest of the world through international financial markets, which would help meeting the financing requirements of reconstruction in Lebanon. The development of modern and effective financial markets, however, requires the establishment of a committee to update existing laws and regulations related to the Lebanese financial and payment systems.

BDL created the Commission for Developing and Modernizing Financial and Banking Laws (established March 2001, internal circular no. 1612). This commission resulted from the cooperation between the Banque du Liban, the Banking Control Commission, the Association of Banks in Lebanon and other private and public bodies. In accordance with Article 70 of the Code of Money and Credit, the Banque du Liban has established, in collaboration with the Ministry of Justice, “the Commission for the Modernization and Development of Financial and Banking Laws”, in order to contribute to the development of money and capital markets.

The functions of this Commission are:

- To revise laws and regulations that govern the banking and financial sectors;
- To adopt relevant international norms and standards;

- To protect investors;
- To ensure market liquidity, transparency and integrity;
- To take into account the creation of new financial instruments (e.g. derivatives) and other innovations; and
- To regulate financial markets in Lebanon.

Unless otherwise stipulated, “electronic financial and banking transactions” and institutions handling them are subjected to the laws, rules and regulations that govern the said institutions or the said transactions, when carried out with traditional, non-electronic means.

### **2.8. The creation of a Committee on Modern Banking and Financial Techniques and Information Technology (COBIT)**

Additionally, the BDL formed a Committee on Modern Banking and Financial Techniques and Information Technology (COBIT) chaired by the First Vice-Governor of the Banque du Liban. COBIT includes members from the BDL, the Banking Control Commission and the Association of Banks in Lebanon. COBIT reports to the Governor of the BDL.

The main objectives of COBIT:

- a. Setting out a comprehensive strategic plan for the payment and settlement systems in the banking sector which would include advanced electronic techniques, with a view to developing and modernizing (1) the payment and settlement system in Lebanon, with the objective of adopting electronic means of payment, (2) the techniques of using the SWIFT network in

- Lebanon, (3) banking operations and services, including advanced electronic services, and (4) the circulars and decisions to keep pace with developments in the fields of electronic banking and financial services.
- b. Obtaining information and keeping abreast of the most recent technical developments and expertise in all matters relating to modern banking and financial techniques and information technology in Lebanon and overseas, via interaction with specialized committees as well as with domestic and international institutions and organizations.
  - c. Reviewing the project of direct links between the Banque du Liban and the banking and financial sectors for the purpose of establishing and developing an inter-bank communication network.
  - d. Examining the means and instruments by which the banking sector may contribute to the development of IT services and activities.
  - e. Contributing to the development and modernization of automated and computerized operations of banks, financial institutions and other entities supervised by the Banque du Liban.
  - f. Designing training programs for the staff involved in implementing modern banking and financial techniques and IT.

The committee did not issue any decision until now, and has not published any studies related to the Electronic Check Collection.

Chart n.2

The current shape of the check:

No 123456	<input type="checkbox"/>	<input type="checkbox"/>
ادفعوا بموجب هذا الشك / Payer Contre Ce Chèque / Pay Against This Cheque		
_____ الامر / To The Order Of / A L'ordre De		
_____ مبلغ / The Sum Of / La Somme De		
الامضاء	يدفع في	Payable At/A
مکان الاصدار	Date	Place
* 1 2 3 4 5 6 * 7 8 9 0 6 5 4 3 2 1 * 0 6 5 * 0 0 0 2 5 4 8 8 7 6 2 *		

## **Chapter three: The possibility of implementing an electronic check collection system in Lebanon**

Traditional means of payment have always had security problems, but now electronic payments retain the same drawbacks and add some risks. Unlike paper, digital “documents” can be copied perfectly and arbitrarily often, digital signatures can be produced by anybody who knows the secret cryptographic key, and a buyer's name can be associated with every payment, eliminating the anonymity of cash. Without new security measures, widespread electronic commerce is not viable. On the other hand, properly designed electronic payment systems can actually provide better security than traditional means of payments, in addition to flexibility it leads to security.

A brief look at the Banking in Switzerland shows how the electronic system can be implemented without touching the Banking Secrecy Law.

### **3.1. The check collection in Switzerland**

The Banking system in Switzerland is characterized by stability, privacy and protection of clients' assets and information. The country's tradition of bank secrecy, which dates to the Middle Ages, was first codified in a 1934 law. All banks in Switzerland are regulated by the Federal Banking Commission (FBC), which derives its authority from a series of federal statutes<sup>62</sup>.

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<sup>62</sup> Peter Gumbel. *Silence is golden*, Time Magazine, September 8, 2002. <http://www.palma.com>

Switzerland is an economically advanced and prosperous nation, with a gross domestic product (GDP) larger than that of some larger western European nations. In addition, the value of the Swiss franc (CHF) has been growing relatively compared to that of other currencies.

In 2003, the financial sector comprised an estimated 14% of Switzerland's GDP and employed approximately 180,000 people (110,000 of whom work in the banking sector); this represents about 5.6% of the total Swiss workforce.

Swiss neutrality and national sovereignty, long recognized by foreign nations, have fostered a stable environment in which the banking sector was able to develop and thrive. Even though it is near Europe's geographical centre, Switzerland maintained neutrality through both World Wars and is not a member of the European Union or the European Economic Area and was not even a member of the United Nations until 2002.

In 2001 Swiss banks managed US\$ 2.6 trillion. The next year it only handled US\$ 2.2 trillion, US\$ 400 billion less than before. This has been attributed to both a bear market and possibly to stricter regulations on Swiss banking<sup>63</sup>.

The Bank of International Settlements, an organization that facilitates cooperation among the world's central banks, is headquartered in the city of Basel. Founded in 1930, the BIS chose to locate in Switzerland because of the country's neutrality, which was important to an organization founded by countries that had

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<sup>63</sup> Laura Cohn and David Fairlamb. *Swiss Banks: Paradise Lost*, Business Week. October 27, 2003.

been on both sides of World War I. Foreign banks operating in Switzerland manage 870 billion Swiss francs worth of assets (as of May 2006).

The Federal Banking Commission, an independent agency of the Swiss government within the Federal Department of Finance, supervises most banking-related activities as well as securities markets and investment funds. Regulatory authority is derived from several statutes.

The office of the Swiss Banking Ombudsman, founded in 1993, is sponsored by the Swiss Banking Ombudsman Foundation, which was established by the Swiss Bankers Association. The ombudsman's services, which are offered free of charge, include mediation and assistance to persons searching for dormant assets. The ombudsman handles about 1,500 complaints raised against banks yearly.

- **Electronic payments**

Swiss banks, as well as the Post Office (which handles some financial transactions) use an electronic payment system known as Swiss Interbank Clearing (SIC). The system is supervised by the Swiss National Bank and is operated via a joint venture.

- **Central Bank**

The Swiss National Bank headquarters are in Berne.

It serves as the country's central bank. Founded by the Federal Act on the Swiss National Bank (16 January 1906), it began conducting business on 20 June



1907. Its shares are publicly traded, and are held by the cantons, cantonal banks, and individual investors; the federal government does not hold any shares.

Although a central bank often has regulatory authority over the country's banking system, the SNB does not; regulation is solely the role of the Federal Banking Commission.

- **Banking secrecy**

The banker's obligation to maintain banking secrecy has always had to give way to other legal requirements (e.g., in connection with criminal investigations brought under Swiss law, inheritance law or debt collection and bankruptcy proceedings). That said, legislation, case law and the majority of legal writers have adapted the extent of its application, so that the concept of discretion in the banking field continues to be supported by a large majority of Swiss voters, which rejected in 1985 a socialist initiative that would have limited banking secrecy considerably. Nonetheless, over the last few years, banking secrecy has not remained unaffected by changes in the legal environment or by increasing interdependence among states. In order to combat potential or actual cases of misuse of banking secrecy, adaptations were required.

- **Banking privacy**

Swiss bank secrecy protects private banking information; the protections afforded under Swiss law are similar to confidentiality protections between doctors and patients or lawyers and their clients. The Swiss government views the right to privacy as a fundamental principle that should be protected by all

democratic countries. While secrecy is protected, in practice all bank accounts are linked to an identified individual, and a prosecutor or judge may issue a “lifting order” in order to grant law enforcement access to information relevant to a criminal investigation.

- **Money laundering**

There are several measures in place to counter money laundering. The Money Laundering Act sets forth requirements of account holders' identification, and requires reporting of any suspicious transactions to the Money Laundering Reporting Office. Switzerland is a major international financial centre vulnerable to the layering and integration stages of money laundering; despite significant legislation and reporting requirements, secrecy rules persist and nonresidents are permitted to conduct business through offshore entities and various intermediaries...” However, Switzerland's cooperation in transnational financial issues has been praised by several major U.S. officials.

A Federal Bureau of Investigation anti-terrorism official noted that Switzerland was one of several countries to participate in joint task forces targeting financing of Al-Qaeda terrorist cells; a former Assistant Secretary of the Treasury praised Swiss cooperation and the country's assistance in the finding and freezing of terrorist and Iraqi assets.

- **Numbered bank accounts**

Some bank accounts are afforded an extra degree of privacy. Information concerning such accounts, known as numbered accounts, is restricted to senior bank officers, rather than being accessible to all the employees of a bank. However, the information required to open such an account is no different from that of an ordinary account; completely anonymous accounts are prohibited by law. Should a criminal investigation take place, law enforcement has access to information related to a numbered account in the same way it has access to information about any other account.

### **3.2. Advantages for implementing this system in Lebanon**

- The main purpose of the implementation of this technology is to accelerate the check collection in terms of seconds instead of days, and to facilitate these transactions without physically moving the checks between banks;
- The acceleration of the clearing will have effects on all major business transactions in the country, for the payment of the check will be done on the spot without losing precious time to be collected;
- This technology should not contradict with banking secrecy law for the simple reason that all managers, employees and clerks of all Lebanese Banks have already signed and approved to respect this secrecy. The only major problem is that Banks, along with Banque

Du Liban, will be aware of other Banks clients names but without necessarily having access on their balances;

- Lebanon can move to numbered accounts like the ones used in Switzerland in order to avoid any violation of the Banking Secrecy Law. The check will not bear the name of the account holder but only will bear the name of the Bank, the numbered account, the amount of the check, its number and its date;
- The saving accounts and deposits will remain secret since there will be no need to provide any information about them, the only information needed is the availability of enough money in the checking account to be able to withdraw the amount of check presented on the counters.

### **3.3. Disadvantages of this implementation**

- The cost in creating a team responsible of the technological implementation (foreign assistance may be needed);
- Provide cooperation between banks in order to choose a committee responsible of this implementation;
- Highly costs of material installation.(small Lebanese banks do not posses the means to pay such high costs);
- High fees for trainers to train banks employees to use the new system;
- Interruption of communication which can result from power failure or war;

- Suspension of payment by another bank due to the failure of equipment.

### **3.4. Conditions for introducing the system**

- **Technological conditions**

This is an entirely new type of negotiable document that creates new challenges - and opportunities - for banks, check processors, and check-image aggregators. Source Technologies should be working with all banks to have a very unique way of leveraging to create new levels of service for their customers or, in some cases, invent entirely new services based on check imaging.

The creation of a technological committee responsible for the implementation and the major changes that have to be done in all banks to enable them to use this new system. This committee should be supported with foreign and local engineers and computer scientists. This committee has the obligation to be available whenever needed during the one year essay of this implementation. Banks should work during this probation year on two systems at the same time (the old one and the new one) in order to keep all data safe.

The creation of a telecommunication committee required to ensure a proper communication system without failure over 24 hours between all banks branches all around the country. This committee would be formed of specialized personnel in that field.

- **Interbanks cooperation**

Regardless of the size of the institution or the volume of the work, the procedures and systems to be implemented in the data collection and reporting should fall into the automated system that use one or more applications, developed in-house for data collection and submission. In most cases, banks that are totally automated use fully integrated applications, that is, the applications work together to accomplish all of the tasks required. Banque Du Liban has to choose one of the automated systems and force all Lebanese Banks to abide by it in order to have a fully electronically collection system.

At first glance, interposing new steps in the check-processing workflow in order to back-stop check-image exchange. Many assume that it should be standardized for both image-enabled and paper-process banks.

The creation of a bankers committee collecting representatives from all major Lebanese banks and BDL to help all other committees with their knowledge on banking transactions. All bank employees should be invited to all kind of seminars related to that matter before the final adaptation of this system.

- **Managerial conditions**

A critical aspect of this strategy is maintaining control over business process. A technology framework must provide this control today. These processes will change as the check-processing agreements evolve:

1. The functionality that the system must provide for submission, voiding, and reissuing of specific jobs, pages;
2. The functionality that it must provide for reviewing print activity, exceptions, audit trails and other reporting;
3. All the banking systems will need to manage directing jobs to certain printers with a need to be able to prioritize print jobs the kind of load-balancing capabilities must have print management platform;
4. Built-in logic and functionality for real-time exception handling including printer problems, voids, and reprints. This logic is completely configurable by the user, allowing them to implement exception-handling procedures based on their specific IRD workflow;
5. Flexible user access control. Any number of user types can be defined to manage access to functionality and information. Browser-based functions can be provisioned to privileged users throughout the enterprise and beyond, giving users access to just those functions they need to efficiently do their jobs;
6. Complete audit trail and reporting facility. Given the need to efficiently handle exceptions and the liability issues, and, it is imperative to be able to demonstrate what was printed, when, where, and who authorized the output;
7. Management of printing and related documents at multiple printers and multiple locations. Print runs can be directed and prioritized based on a number of grouping factors such customer, Federal Reserve Region, or document type;

## 8. Thread management and load balancing.

- **Legal conditions**

A legal committee to study all legal issues and protect the Banking Secrecy Law. This committee is also responsible of creating a new law to adept with the new processes and finally to see and rule the litigations that will happen after the full implementation of this system. This committee should be formed from legal advisors, legal representatives of major Lebanese banks and of course from BDL along with specialized personnel working in that field from the USA and Switzerland.

For a year long BDL and Lebanese Banks will be analyzing legal and cost/benefit issues, and also conducting “hands-on” tests to explore approaches, such as beginning with low-value checks, and the potential for image technology to support an electronic return item process and consider a unique form that might help the banking industry move in stages toward an ideal system.

Getting from today's check system to an ideal system will be an enormous challenge.

For the Lebanese banking industry to achieve all the above many efforts should be done on that matter and many committees should be created, each of which would be specialized in a certain aspect of this transformation.

This new banking regulation will help Lebanon

- Reduce time and paper;



- Reduce transportation fees to exchange checks physically;
- Create a new legal banking system;
- Eliminate barriers between distant regions;
- Improve the Lebanese banking system.

## **Chapter four: Conclusion and recommendations**

No industry is more competitive than banking. Banks should support the evolution of safe, convenient new payment options. And when it comes to the safety issues, such as contingency backup, settlement, and credit judgment, nobody has as much to contribute to the design and implementation of new systems as bankers do. Change is more likely to come slowly than swiftly.

Billions of checks are being processed each year in all countries. Even though the check collection system works pretty well, it is costly, slow relative to electronic alternatives, prone to delays and errors, and increasingly subject to criminal exploitation. The more the check will endure as a popular means of payment, the more commitment is needed to change the check system for the better.

Electronics can accelerate the collection process, making funds available faster for banks and their customers. And it can accelerate the return process. It can reduce costs and reduce risks.

It can reduce the cost burden on banks only when they are supporting paper payment systems, and other providers are competing with electronic payment systems. The paper check would be stopped as early as possible in the collection process, be that at the bank of first deposit, or at an intermediary such as a Reserve Bank or correspondent bank, or even at the point of sale. The check payment information would flow to the check-writer's bank, but the check would not. The check collection process would be all-electronic.

In this ideal model, the costs for check collection would be reduced. Payments would be collected faster, with every check presented electronically to the check-writer's bank on the same day or within one business day of entering the bank collection system. Payments would be collected more reliably, without delays due to weather or errors due to repetitive efforts to read the paper. Losses due to returned check would be reduced by a swifter collection and return process. Fraud would be deterred by closing the gap between collection times and funds availability schedules for depositors. And banks could reduce their costs by reducing the resources needed to process and collect deposited checks, and process and return the checks written by their customers.

#### **4.1. Recommendations for the implementation of Electronic Technology**

In order to implement a safe, secure and fast electronic check collection system some recommendations are required. They consist of:

- Standards for electronic exchange of check payment information;
- Systems and standards for banks collecting the checks electronically to be able to provide sufficient information from each check to meet the needs of the paying bank and the check-writer;
- Safeguards and services to protect consumers' funds and provide timely, high-quality access to particular checks, or representations of checks, when needed; and

- Legal and regulatory actions to allow for electronics rather than paper to constitute presentment, and to address risk and liability issues such as signature verification.

#### **4.2. Benefits**

The benefits obtained from the implementation of an electronic check collection system are the following:

- The atomization of the check collection in Lebanon is being already effective between branches of the same bank, but what needs to be done is to use this technology among banks under the supervision of Banque Du Liban;
- The main purpose of the implementation of this technology is to accelerate the check collection so that it takes seconds instead of days;
- The acceleration of the clearing will have effects on all major business transactions in the country;
- This technology should not contradict with banking secrecy law for the simple reason that all managers, employees and clerks of all Lebanese Banks have already signed and approved to respect this secrecy. The only major problem is that Banks, along with Banque Du Liban will be aware of other Banks clients names but without necessarily having access to their balances;
- The saving accounts and deposits will remain secret since there will be no need to provide any information about them, the only

information needed will be whether there is enough money in the checking account to be able to withdraw the amount of check presented on the counters;

- The implementation of this technology will provide a major change in Banking Transactions.

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[www.snb.ch.org](http://www.snb.ch.org)



## ANNEX – 1 –

### The clearing houses in Lebanon



قرار أساسي رقم ٦٩١١

متعلق بنظام غرف المقاصة المنشأة في مصرف لبنان

ان حاكم مصرف لبنان،

بناء على قانون النقد والتسليف ولا سيما المادتين ٣٣ و ٨٠ منه،

وبناء على قرار المجلس المركزي المتخذ في جلسته المنعقدة بتاريخ ١٩٩٨/٢/٢٥،

يقرر ما يأتي:

#### المادة الاولى:

يوضع موضع التنفيذ النظام الجديد لغرف المقاصة المنشأة في مصرف لبنان لتبادل وتسديد قيم

الشيكات واوامر الدفع والحوالات المرفق بهذا القرار.

#### المادة الثانية:

تلغى النصوص التنظيمية التالية الصادرة عن مصرف لبنان\*:

التعميم للمصارف رقم ٤٠ تاريخ ١٩٦٨/٧/١٨

والتعميم للمصارف رقم ٥٦٣ تاريخ ١٩٨٥/٥/١٥

\* ارقام التعميم هي وفقا لترقيم القديم.

والقرار رقم ٥٢٦٧ تاريخ ١٠/٢١/١٩٩٣\* الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢٠٢ تاريخ ١٠/٢١/١٩٩٣  
والقرار رقم ٥٣١٦ تاريخ ١٢/٢٣/١٩٩٣ الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢١٥ تاريخ ١٢/٢٣/١٩٩٣  
والقرار رقم ٥٣٥٨ تاريخ ٢/٥/١٩٩٤ الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢٢٦ تاريخ ٢/٥/١٩٩٤  
والقرار رقم ٥٥٤٢ تاريخ ٦/١٦/١٩٩٤ الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢٥٨ تاريخ ٦/١٦/١٩٩٤ والقرار رقم ٥٥٨٤ تاريخ ٧/٢٥/١٩٩٤ الموضوع موضع التنفيذ  
بالتعميم للمصارف رقم ١٢٦٩ تاريخ ٧/٢٥/١٩٩٤  
والقرار رقم ٥٦٦٨ تاريخ ٩/٨/١٩٩٤ الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢٨٠ تاريخ ٩/٨/١٩٩٤  
والقرار رقم ٥٦٨٠ تاريخ ٩/٢١/١٩٩٤ الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢٨٥ تاريخ ٩/٢١/١٩٩٤  
والقرار رقم ٥٧٠٢ تاريخ ١٠/٦/١٩٩٤ الموضوع موضع التنفيذ بالتعميم للمصارف رقم  
١٢٨٨ تاريخ ١٠/٦/١٩٩٤

المادة الثالثة:

يعمل بهذا القرار والنظام المرفق به فور صدورهما.

المادة الرابعة:

ينشر هذا القرار والنظام المرفق به في الجريدة الرسمية . بيروت في ٢٦ شباط ١٩٩٨

حاكم مصرف لبنان

رياض توفيق سلامه

\* ورد التاريخ خطأ في التعميم الاصلي ١٠/٢٠/١٩٩٣ والصحيح ١٠/٢١/١٩٩٣.

## ١٩٩٤ نظام غرف المقاصة المنشأة في مصرف لبنان

### المادة الاولى:

١- غاية غرف المقاصة المنشأة في المركز الرئيسي لمصرف لبنان وفي فروعها هي ان تسهل للمصارف وفروعها العاملة في لبنان، عن طريق المقاصة اليومية فيما بينها:

أ - تسديد الشيكات المسحوبة بالعملة اللبنانية على صناديقها او على صناديق مصرف لبنان الكائنة في بيروت ومختلف المناطق.

ب - تسديد الشيكات المسحوبة بذات العملة الاجنبية على صناديقها او على حساباتها لدى مصرف لبنان في بيروت.

ج - تسديد الشيكات المسحوبة منها بالعملات الاجنبية على صناديق مراسيلها في الخارج.

د - تسديد اوامر الدفع والحوالات الصادرة عن وزارة المالية لدفعها من صناديق مصرف لبنان الكائنة في بيروت ومختلف المناطق.

٢- يجري تسديد المقاصة بواسطة حسابات ودائع دائنة بالعملة اللبنانية مفتوحة في دفاتر مركز مصرف لبنان في بيروت وفي سائر فروعها باسم كل مصرف، وبالعملات الاجنبية المعنية مفتوحة في دفاتر مركز مصرف لبنان في بيروت.

٣- لا تقبل في غرف المقاصة الشيكات المقدمة من قبل مصرف ما والتي تكون مسحوبة منه على حساباته لدى مصرف لبنان وجميع فروعها، او على حساباته المفتوحة لدى مراسليه في الخارج.

### المادة الثانية:

١- \* ان الاشتراك في غرف المقاصة الزامي لكل مصرف عامل في المنطقة المنشأة فيها غرفة مقاصة، وذلك وفقا لاحكام هذا النظام.

يمكن لاي مصرف ان يطلب من مصرف لبنان، بكتاب معلل، الموافقة على:

أ - اشتراك اي من فروعها في غرفة مقاصة غير غرفة المقاصة الكائنة في المنطقة التي يقع فيها هذا الفرع.

\* \* كما اصبح بموجب القرار رقم ٧٦٥٦ تاريخ ٢٠٠٠/٩/٨ (تعميم ١٨٤٦ - ترقيم قدم -).

ب - تجزئة اعمال مقاصة فروع بين غرفة المقاصة الواقع ضمن نطاقها هذه الفروع وغرفة المقاصة الواقع ضمن نطاقها مركزه الرئيسي.

٢- يحق للمصرف المشترك اجراء المقاصة بواسطة مصرف مشترك آخر شرط ان يعمم ذلك على جميع المصارف.

٣- على جميع المصارف العاملة الاشتراك بجميع جلسات غرف المقاصة التي تحصل في مصرف لبنان وفروعه وذلك بالعملة اللبنانية وبالعملات الاجنبية المنصوص عنها في المادة الحادية والعشرين من هذا النظام.

٤- تعفى المصارف وفروعها من الاشتراك بجلسة مقاصة بعملة معينة اذا كانت لا تمسك في دفاترها حسابات بهذه العملة، على ان تقدم تصريحاً خطياً بذلك، مصادقاً عليه من مفوضي المراقبة على اعمالها.

#### المادة الثالثة:

تجري جلسات المقاصة بادارة مشرفين اثنين من مصرف لبنان:

أ - مشرف اداري مهمته تطبيق هذا النظام تجاه جميع المشتركين.

ب - مشرف فني مهمته تسوية عمليات المقاصة مع مساعديه الفنيين على جهاز الكمبيوتر.

#### المادة الرابعة:

١- على كل مصرف مشترك ان يعين ممثلاً اصيلاً وممثلاً رديفاً من بين مستخدميه المثبتين.

٢- يمثل كل مصرف مستخدم او مستخدمون لهم صفة المستخدم النظامية ، وتوضع اسماء جميع الممثلين ونماذج تواجيعهم تحت اطلاق المصارف المشتركة في كل غرفة.

٣- على الممثلين ان يكونوا حاضرين في الاماكن المعينة لهم في تمام ساعة افتتاح الجلسات.

٤- على الممثلين التقيد بأحكام هذا النظام وبموجبات الانضباط التي يضعها "المشرف الاداري" على المقاصة كما عليهم الا يغادروا الغرفة الا بعد اختتام الجلسة وبعد الاستئذان من "المشرف الاداري".

٥- يحظر بتاتا على كل شخص غريب ولوج غرف المقاصة خلال دوام الجلسة.

٦- يجب ان يكون كل مستخدم مزوداً بترخيص يحمل رسمه ، صادر عن المصرف الذي ينتمي

اليه.

٧- يحق "للمشرف الاداري" على المقاصة، دون تعرض لتطبيق الغرامات الملحوظة بالمادة السادسة عشرة ولسائر التدابير التي يمكن مصرف لبنان ان يتخذها بحق المصرف المشترك، ان يفرض ، اذا رأى ذلك مناسباً ، ابدال اي ممثل في الحالات التالية:

أ - تصرف غير مرض ، ولا سيما في ما عني موجبات الانضباط.

ب - اخطاء ناتجة عن اهمال فادح متكرر.

#### المادة الخامسة:

١- توزع الاماكن في غرف المقاصة على اساس الرقم الترتيبي كما هو وارد على لائحة المصارف التي ينشرها مصرف لبنان.

٢- يجب وضع الرقم الترتيبي على كل بيان تجاه اسم كل مصرف مشترك.

#### المادة السادسة:

١- تعقد في كل يوم جلسة تتخللها عدة جلسات في عدة عملات وتحدد مواعيدها من قبل حاكم مصرف لبنان.

٢- فور افتتاح الجلسة يسلم مندوب كل مصرف الى العاملين على اجهزة الكمبيوتر في غرفة المقاصة في مصرف لبنان اسطوانتين متطابقتين مع بيان يحمل اسم المصرف ورقمه على نسختين بمعطيات الاسطوانة موقع عليه من قبل المفوضين بالتوقيع اصولاً عن المصرف. تحتوي الاسطوانة الواحدة على المعلومات التالية:

أ - بند تعريف للاسطوانة (اسم المصرف ورقمه ونوع العملة وتاريخ الجلسة.)

ب - العدد والقيمة الاجمالية للشيكات المسلمة لكل مصرف والمحرة بالعملة اللبنانية.

ج - العدد والقيمة الاجمالية للشيكات المسلمة لكل مصرف والمحرة بالعملات الاجنبية، كل عملة اجنبية بمفردها.

د - العدد والقيمة الاجمالية للشيكات المعادة غير مدفوعة لكل مصرف بالعملة اللبنانية.

هـ- العدد والقيمة الاجمالية للشيكات المعادة غير مدفوعة لكل مصرف بالعملات الاجنبية، كل عملة اجنبية بمفردها.

٣- يتقايض ممثلو المصارف فيما بينهم الشيكات غير المدفوعة والمسلمة في اليوم السابق والشيكات موضوع مقاصة اليوم ، وذلك بموجب جداول فردية بالعملة اللبنانية وبكل عملة اجنبية.

أ - يجب ان يتم تسليم هذه الشيكات بموجب جداول دفع على نسختين تنظم لكل مصرف بمفرده لقاء ابراء من ممثل المصرف المستلم على النسخة الثانية منها.

ب - ترتب الشيكات حسب ورودها على الجدول.

ج - يجب ضم بطاقة تدقيق لكل رزمة من الشيكات لكل مصرف بمفرده.

د - يجب ان تكون جداول تسليم الشيكات وبطاقات التدقيق منظمة بحسب نماذج البيانات الخاصة بغرف المقاصة الموضوعة من قبل مصرف لبنان والتي يتعين على كل مصرف ان يقوم بطبعتها على نفقته الخاصة.

٤- بعد قراءة الاسطوانة المستلمة يؤشر العامل على جهاز الكمبيوتر على البيان المرفق بالاسطوانة ويعيد نسخة منه الى مندوب المصرف. وفي حال حصول خطأ في المعلومات بين الاسطوانة والبيان من جهة والشيكات المسلمة من جهة ثانية يصحح الخطأ قبل اعطاء النتيجة النهائية للجلسة، وذلك وفقا لواقع الشيكات المسلمة، وتعود مسؤولية تصحيح الاخطاء الى مندوب المصرف المعني الذي عليه ان يطلب خطيا من المشرف الفني على المقاصة اجراء التصحيح الفني الواجب.

٥- يتمتع مصرف لبنان عن استلام الاسطوانة من ممثلي المصارف بعد الموعد الذي يعمم على المصارف من قبل حاكم مصرف لبنان، ولا يحق للمصرف الذي يحضر متأخرا ان يسلم شيكاته بل يستلم الشيكات العائدة له.

#### المادة السابعة:

١- عند انتهاء الجلسة الخاصة بكل عملة يسلم مصرف لبنان لكل مصرف اسطوانتين بنتائج جلسة المقاصة تحتوي كل واحدة منهما على:

أ - النتائج النهائية لجلسة اليوم السابق والتي تتضمن صافي قيمة الشيكات المسلمة والمستلمة بعد احتساب الشيكات المرتجعة غير المدفوعة وذلك بالنسبة لكل عملة بمفردها.

ب - النتائج المؤقتة لجلسة اليوم ويتضمن نتائج العمليات المسلمة والمستلمة لكل مصرف (الميزان المؤقت).

٢- كما ويوزع مصرف لبنان على كل مصرف جدولاً يتضمن المعلومات المدرجة اعلاه.

٣- يوقع المشرف الاداري والمشرف الفني على الميزان النهائي لعمليات جلسة اليوم السابق كي تصبح نافذة للتسجيل لصالح المصارف او على حساباتها.

#### المادة الثامنة:

قبل اتمام عمليات المقاصة النهائية تبقى الشيكات بملكية المصارف المتخلفة عنها، ولا تكون المصارف المسحوبة عليها سوى مؤتمنة على تلك الشيكات. على هذه المصارف ان تكون قادرة على اعادتها فوراً الى غرفة المقاصة بناء على طلبها.

ان مجرد اشتراك اي مصرف في غرفة المقاصة يعتبر متضمناً تفويض مصرف لبنان بشكل غير قابل الرجوع عنه لاعادة قيد الشيكات المسحوبة منه على مراسليه وذلك على حسابه المفتوح لدى مصرف لبنان بذات العملة الاجنبية.

#### المادة التاسعة:

في حال تخلف مصرف ما يكون قد تلقى شيكات في اليوم السابق عن حضور جلسة مقاصة اليوم التالي لاعادة الشيكات غير المدفوعة ، لا تتأثر الجلسة بعدم حضوره، ويعتبر مجموع هذه الشيكات مدفوعاً وتجري تصفية حسابات الشيكات المرتجعة منه واليه خارج نظام غرفة المقاصة وذلك باتصال مباشر بين المصارف المعنية.

#### المادة العاشرة:

ينصح للمصارف بأن ينبه بعضها البعض الآخر قبل افتتاح جلسة المقاصة الى ما قد يعاد من شيكات ذات اهمية محررة بالعملة اللبنانية او بالعملات الاجنبية حتى تستطيع المصارف المعنية عند الضرورة تمويل حساباتها لدى المركز الرئيسي لمصرف لبنان وسائر فروعها، قبل موعد افتتاح جلسات المقاصة.

#### المادة الحادية عشرة:

١- على كل مصرف مدين وبعد ساعة من بدء كل جلسة تكوين المؤونة الكاملة في حساباته بالعملات الاجنبية لدى المركز الرئيسي لمصرف لبنان وكذلك بالنسبة لحساباته بالعملة اللبنانية لدى المركز الرئيسي لمصرف لبنان وسائر فروعها التي توجد فيها غرف مقاصة لتغطية الرصيد المدين

بالعملة اللبنانية او بالعملات الاجنبية الذي ظهر في الميزان المؤقت لليوم السابق، هذا الرصيد الذي يمكن عند الاقتضاء ان تنزل منه قيمة الشيكات غير المدفوعة المتلقاة في ذلك اليوم والتي يجب عليه اعادتها الى المصارف المسلمة.

٢- اذا لم يؤمن المصرف المعني المؤونة الكافية لتغطية الرصيد المدين بالعملة اللبنانية او بأي من العملات الاجنبية يلغى الميزان المذكور وتستأنف جميع عمليات المقاصة فورا مستبعدة منها حركة الشيكات المتعلقة بهذا المصرف المتخلف. ويجب على هذا المصرف ان يسلم حالا الى المصارف وقبل موعد انتهاء الجلسة جميع الشيكات المحررة بالعملة التي ظهر فيها الرصيد المدين والتي كانت سلمت اليه في اليوم السابق كما يجب على هذه المصارف ان تسلم اليه قبل نفس الساعة جميع الشيكات المحررة بذات العملة والمسحوبة عليها التي تكون قد تسلمتها في ذلك اليوم من المصرف المذكور.

#### المادة الثانية عشرة:

اذا تبين في ما عني مصرف ما، على الرغم من موجبات المادة الحادية عشرة اعلاه، ان المؤونة اللازمة لتغطية الرصيد المدون في الميزان المؤقت ليست كافية لتغطية الرصيد النهائي بعد رجوع الشيكات غير المدفوعة، فيجب على هذا المصرف ان يقدم تكملة المؤونة في الساعة المحددة في البند ٢ من المادة الحادية عشرة، ويؤجل تسديد المقاصة الى هذا الموعد، وعند عدم التنفيذ تلغى المقاصة بالعملة المعنية وتستأنف على الوجه المبين في المادة الحادية عشرة.

#### المادة الثالثة عشرة:

على المشرف الاداري على المقاصة اعلام ادارته فورا بالغاء مقاصته تطبيقا لنصوص المادتين ١١ و ١٢ اعلاه. كما على المديرية المعنية اعلام الحاكم فورا بالامر المذكور.

#### المادة الرابعة عشرة:

يجب ان تحمل الشيكات المقدمة الى المقاصة على ظهرها عبارة "مقاص عليه بتاريخ....."، مع ذكر اسم المصرف المتخلي وتاريخ تسديد المقاصة وتعتبر هذه العبارة بمثابة ابراء.



#### المادة الخامسة عشرة:

خلافاً للاحكام السابقة تمهل المصارف المشتركة يومين لاعادة الشيكات غير المدفوعة المحررة بأي من العملات الاجنبية، ويجري اقبال جلسة المقاصة المتعلقة بهذه العملات بصورة نهائية على هذا الاساس.

#### المادة السادسة عشرة:

تفرض الغرامات المحددة أدناه في الحالات التالية:

أ - تأخر ممثل الى ما بعد افتتاح الجلسة حتى ولو لم يكن لديه شيكات للتسليم الى المصارف  
/٢٠٠ ٠٠٠ ل.ل.

ب - انصراف ممثل قبل اختتام الجلسة /٢٠٠ ٠٠٠ ل.ل.

ج - خطأ في جداول تسليم الشيكات أو في بطاقات التدقيق (قيم الشيكات او عددها) /٠٠٠  
ل.ل./٢٠٠

د - خطأ في محتويات الاسطوانة يسبب اعادة ادخال المعلومات /٢٠٠ ٠٠٠ ل.ل.

هـ - تخلف ممثل عن الحضور /٠٠٠ ٠٠٠ ل.ل.

و - خطأ قد يسبب تأخير او الغاء جلسة مقاصة /٢٠٠ ٠٠٠ ل.ل.

#### المادة السابعة عشرة:

على ممثلي المصارف، وقبل انصرافهم من غرفة المقاصة التأكد من اصطحابهم جميع المستندات العائدة الى مصرفهم مثل (الشيكات - جداول تسليم الشيكات - الميزان المؤقت - الميزان النهائي - بطاقات التدقيق - الاسطوانات). وعلى ادارات المصارف التأكد من استلامها هذه المستندات من قبل ممثليها بصورة يومية . لا يتحمل مصرف لبنان اي مسؤولية من جراء ضياع اوراق او اي مستندات اخرى في امكنته.

#### المادة الثامنة عشرة:

يجري عرض اوامر الدفع والحوالات الصادرة عن وزارة المالية وتسديد قيمتها عبر غرف المقاصة وفقاً للاحكام المنصوص عليها في هذا النظام بشأن الشيكات.

المادة التاسعة عشرة:

ان اي تقاعس من قبل مصرف ما عن القيام بواجباته المفروضة عليه بموجب هذا النظام يعرضه للعقوبات الادارية المنصوص عليها في المادة ٢٠٨ من قانون النقد والتسليف.

المادة العشرون:

تكلف المصارف بتحمل الابعاء المالية المترتبة عليها نتيجة اشتراكها في غرف المقاصة بحسب حجم اعمالها وفقا لتكاليف يحددها مصرف لبنان.

المادة الحادية والعشرون:

يطبق هذا النظام على الشيكات المحررة بالليرات اللبنانية والدولار الاميركي وبالجنه الاسترليني وبالبيورو وتحدد بقرارات تصدر عن الحاكم مواعيد تطبيقه بالنسبة للشيكات المحررة بسائر العملات الاجنبية الاخرى.

المادة الثانية والعشرون:

يعمل بهذا النظام في غرف المقاصة المنشأة في مركز مصرف لبنان في بيروت ولدى فروعها (جونيه، طرابلس، زحلة، صيدا، صور والنبطية) وذلك بالنسبة للمصارف وفروعها الواقعة ضمن نطاق مدينة بيروت وضواحيها وكل من المدن الاخرى المذكورة وضواحيها اقر هذا النظام في جلسة المجلس المركزي المنعقدة بتاريخ ١٩٩٨/٢/٢٥.

الحاكم

رياض توفيق سلام

## ANNEX – 2 –

### Cleared checks in Lebanese Pounds

Banque du Liban

Economic and Financial Data

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Main Indicators : Cleared Cheques in Lebanese Pound

Source : *Banque du Liban*

Note : *Data Not Seasonally Adjusted*

Period	Number	in millions of LBP
Jul-07	286954	1064702.486
Jun-07	278245	989142.4491
May-07	298947	1114223.015
Apr-07	273515	956121.7111
Mar-07	287673	1051126.363
Feb-07	249764	945484.0918
Jan-07	285468	1060501.167
Dec-06	271339	1008597.096
Nov-06	262116	1047657.925
Oct-06	250690	980301.5343
Sep-06	226840	849486.564
Aug-06	172153	631062.9256
Jul-06	218754	707819.5275
Jun-06	286420	947643.825
May-06	295335	994719.1447
Apr-06	263306	912416.0892
Mar-06	303097	1060929.349
Feb-06	251477	839455.7072
Jan-06	252439	903318.869
Dec-05	302773	1132860.934
Nov-05	268959	1024620.235
Oct-05	292027	1037621.679
Sep-05	283732	967625.1562
Aug-05	287428	932501.4544
Jul-05	287730	1117741.781
Jun-05	289827	974500.7778
May-05	285572	957462.7864
Apr-05	280240	1025325.34
Mar-05	313984	1200290.268
Feb-05	243618	895362.9465
Jan-05	286418	1070601.855
Dec-04	336470	1155742.9
Nov-04	291263	1012400.73
Oct-04	323967	1256288.13
Sep-04	319081	1204143.02
Aug-04	300780	1182381.01
Jul-04	319475	1152984.26
Jun-04	308781	1051996.69
May-04	289627	1095104.88
Apr-04	286113	1117208.95
Mar-04	309693	1207119.12
Feb-04	266632	1067515.19
Jan-04	303742	1215783.61
Dec-03	336544	1179365.3

# ANNEX - 3 -

## Volume of Returned Unpaid Checks

حركة خرف المكافسة بالبنوك البنكية والبنوك الأجنبية خلال العام 2007													
البلد	2007		يناير		فبراير		مارس		أبريل		مايو		
	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	
Sep-07	276,561	31.15%	291,797	31.04%	286,954	31.32%	278,704	31.88%	298,947	31.78%	273,513	31.93%	
610,629	68.85%	644,915	68.96%	637,469	68.68%	611,245	68.12%	633,765	68.22%	587,049	68.07%	615,293	68.27%
888,690	100%	838,710	100%	889,948	100%	837,713	100%	880,584	100%	880,584	100%	800,868	100%
القيمة													
Sep-07	1,023	21.82%	1,102	22.35%	989	23.13%	1,114	22.07%	868	22.87%	1,051	23.89%	
2,593	78.68%	2,604	77.67%	2,456	76.87%	2,466	77.93%	2,332	77.33%	2,377	76.11%	1,997	75.82%
4,834	100%	5,029	100%	4,768	100%	4,818	100%	4,332	100%	4,636	100%	3,997	100%
القيمة													
Sep-07	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													
Sep-07	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
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القيمة													

حركة خرف المكافسة بالبنوك البنكية والبنوك الأجنبية خلال العام 2006													
البلد	2006		يناير		فبراير		مارس		أبريل		مايو		
	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	
Sep-06	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													
Sep-06	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													

حركة خرف المكافسة بالبنوك البنكية والبنوك الأجنبية خلال العام 2005													
البلد	2005		يناير		فبراير		مارس		أبريل		مايو		
	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	
Sep-05	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													

حركة خرف المكافسة بالبنوك البنكية والبنوك الأجنبية خلال العام 2007													
البلد	2007		يناير		فبراير		مارس		أبريل		مايو		
	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	
Sep-07	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													

حركة خرف المكافسة بالبنوك البنكية والبنوك الأجنبية خلال العام 2006													
البلد	2006		يناير		فبراير		مارس		أبريل		مايو		
	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	
Sep-06	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													

حركة خرف المكافسة بالبنوك البنكية والبنوك الأجنبية خلال العام 2005													
البلد	2005		يناير		فبراير		مارس		أبريل		مايو		
	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	القيمة الى المجموع	النسبة الى المجموع	
Sep-05	226,840	31.03%	172,153	28.42%	218,754	28.42%	286,420	30.10%	295,235	30.95%	263,065	31.23%	
517,156	68.97%	382,638	70.82%	531,021	70.82%	687,273	68.90%	685,635	69.05%	587,397	58.77%	667,325	68.03%
القيمة													

المجموع	100%	554,811	100%	749,775	100%	973,693	100%	981,020	100%	850,703	100%	970,422	100%	833,515	100%	846,099
القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة
Sep-06	23.69%	631	18.33%	708	20.32%	948	21.81%	994	22.60%	912	22.60%	1,061	20.22%	839	21.66%	903
	76.31%	1,348	81.67%	2,092	79.68%	2,464	78.19%	2,532	77.40%	2,169	77.40%	2,410	79.78%	2,197	78.34%	2,166
	100%	2,663	100%	3,862	100%	4,663	100%	4,813	100%	4,183	100%	4,684	100%	4,152	100%	4,170

حجم تطور حركة شرك المقاصف بالبنوك التجارية و بالصفحات الأجنبية خلال العامين 2006 و 2007

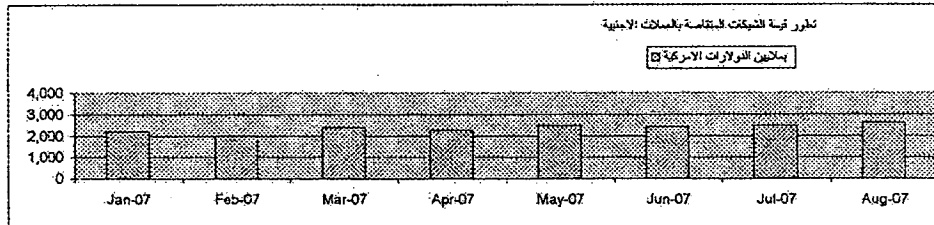
البنك	أب	تموز	حزيران	أيار	نيسان	أذار	شباط	كانون الثاني	كانون الثاني
البنك	49,721	68,200	-7,716	3,612	10,209	-15,424	-0.68%	-1,713	13.08%
بالبنك اللبنانية	69.50%	31.18%	1.22%	1.22%	3.88%	-5.09%	-0.68%	-1,713	13.08%
بالصفحات الأجنبية	29.50%	68.82%	-1.22%	-1.22%	-3.88%	5.09%	0.68%	1,713	-13.08%
المجموع	92,873	106,448	-76,028	-46,919	-3,48	-54,832	-7.69%	-44,768	1.99%
قيمة الصفحات	142,594	381,899	-83,744	-43,307	9,861	-69,456	-5.58%	-46,481	4.88%
مطارات الثرات	173	357	41	120	44	-10	12.63%	106	17.40%
الصفحات التجارية الأخرى	805	364	-54	-76	69	-33	-8.09%	-200	1.77%
المجموع مطارات الثرات	1,388	908	-40	5	148	-59	-4.70%	-195	5.16%

الشركات المرتبطة خلال العام 2007

البنك	2007	أب	تموز	حزيران	أيار	نيسان	أذار	شباط	كانون الثاني
البنك	743,996	554,811	749,775	973,693	981,020	850,703	970,422	833,515	846,099
بالبنك اللبنانية	23.69%	18.33%	20.32%	21.81%	22.60%	22.60%	20.22%	21.66%	21.66%
بالصفحات الأجنبية	76.31%	81.67%	79.68%	78.19%	77.40%	77.40%	79.78%	78.34%	78.34%
المجموع	743,996	554,811	749,775	973,693	981,020	850,703	970,422	833,515	846,099



الشركات المدرجة			المجموع		كانون الأول 2007		تشرين الثاني 2007		تشرين الأول 2007		2007
النسبة إلى المجموع	العدد	المرتبة للمجموع	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	النسبة إلى المجموع	العدد	النسبة إلى المجموع	النسبة إلى المجموع
		العدد				Dec-07			Nov-07		Oct-07
25.26%	51,245	1.48%	31.53%	3,403,623	31.32%	282,581	31.06%	286,119	31.83%	305,540	31.19%
74.74%	151,666	2.01%	68.47%	7,390,866	68.68%	619,689	68.94%	634,963	68.17%	654,253	68.81%
100%	202,912	1.85%	100%	10,794,489	100%	902,270	100%	821,082	100%	959,795	100%
النسبة إلى المجموع	القيمة	النسبة إلى المجموع	القيمة	النسبة إلى المجموع	النسبة إلى المجموع	القيمة	النسبة إلى المجموع	القيمة	النسبة إلى المجموع	القيمة	النسبة إلى المجموع
		القيمة				Dec-07			Nov-07		Oct-07
18.05%	185	1.44%	21.95%	12,675	19.77%	1,028	21.14%	1,173	21.20%	1,168	20.73%
81.95%	557	1.83%	78.05%	29,883	80.23%	2,767	78.86%	2,901	78.80%	2,878	79.27%
100.0%	1,025	1.74%	100%	57,739	100%	5,202	100%	5,648	100%	5,508	100%



الشركات			المجموع		كانون الأول 2006		تشرين الثاني 2006		تشرين الأول 2006		2006
النسبة إلى المجموع	العدد	المرتبة للمجموع	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	النسبة إلى المجموع	العدد	النسبة إلى المجموع	النسبة إلى المجموع
		العدد				Dec-06			Nov-06		Oct-06
23.93%	69,844	2.24%	30.58%	3,053,966	32.10%	271,339	31.66%	262,116	30.95%	250,690	30.49%
76.07%	221,986	3.10%	69.42%	6,933,212	67.90%	573,996	68.34%	565,766	69.05%	559,237	69.51%

100%	291,830	2.84%	100%	9,987,178	100%	845,335	100%	827,882	100%	809,927	100%
النسبة إلى المجموع	القيمة		النسبة إلى المجموع	القيمة	النسبة إلى المجموع	القيمة	النسبة إلى المجموع	القيمة	النسبة إلى المجموع	القيمة	النسبة إلى المجموع
		القيمة				Dec-06		Nov-06		Oct-06	
19.91%	234	2.11%	22.22%	10,883	24.11%	1,009	25.87%	1,048	24.51%	980	23.96%
80.09%	626	2.42%	77.78%	25,264	75.89%	2,106	74.13%	1,991	75.49%	2,002	76.04%
100.0%	1,178	2.35%	100%	48,980	100%	4,184	100%	4,050	100%	3,999	100%

النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد
-26.63%	-18,598	-0.75%	11.45%	349,657	4.14%	11,242	9.16%	24,003	21.88%	54,850	21.92%
-31.68%	-70,320	-1.09%	6.60%	457,654	7.96%	45,693	12.23%	69,197	16.99%	95,018	17.96%
-30.47%	-88,918	-0.99%	8.08%	807,311	6.74%	56,935	11.26%	93,200	18.50%	149,868	19.17%
		القيمة									
-21.10%	-49	-0.67%	16.47%	1,792	1.94%	20	11.97%	125	19.12%	187	20.39%
-10.96%	-69	-0.59%	18.29%	4,620	31.43%	662	45.73%	910	43.76%	876	45.03%
-12.97%	-153	-0.60%	17.88%	8,759	24.32%	1,018	37.00%	1,498	37.72%	1,508	39.13%

النسبة إلى المجموع	العدد	كانون الأول 2007		تشرين الثاني 2007		تشرين الأول 2007		النسبة إلى المجموع
		النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	
النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع	العدد	النسبة إلى المجموع



			Dec-07		Nov-07		Oct-07	
العدد								
1.48%	25.26%	51,246	27.32%	5,035	25.71%	4,564	24.66%	4,513
2.01%	74.74%	151,666	72.68%	13,392	74.29%	13,188	75.34%	13,785
1.85%	100%	202,912	100%	18,427	100%	17,752	100%	18,298
	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة
		مجموع		Dec-07		Nov-07		Oct-07
القيمة								
1.44%	18.05%	185	16.50%	17	19.40%	19	16.75%	17
		6		1		1		1
		0		0		0		0
1.80%	81.95%	549	83.50%	58	80.60%	53	83.25%	55
1.74%	100%	1,025	100%	106	100%	100	100%	101

			العدد		العدد		العدد		2006
الشكايات المرتجعة للمجموع	النسبة الى المجموع	العدد	النسبة الى المجموع	العدد	النسبة الى المجموع	العدد	النسبة الى المجموع	العدد	النسبة الى المجموع
				Dec-06		Nov-06		Oct-06	
العدد									
2.24%	23.93%	69,844	24.30%	4,534	24.47%	4,168	23.34%	4,506	23.24%
3.10%	76.07%	221,986	75.70%	14,127	75.53%	12,864	76.66%	14,802	76.76%
2.84%	100%	291,830	100%	18,661	100%	17,032	100%	19,308	100%
	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع	القيمة	النسبة الى المجموع
		مجموع		Dec-06		Nov-06		Oct-06	
القيمة									
2.11%	19.91%	234	23.02%	19	24.39%	20	18.86%	15	22.96%
		5		0		0		0	
		0		0		0		0	
2.39%	80.09%	619	76.98%	42	75.61%	40	81.14%	44	77.04%
2.35%	100%	1,178	100%	83	100%	80	100%	82	100%

**ANNEX – 4 –**

**Check Clearing for the 21<sup>st</sup> Century or the Check 21 Act  
2004**

*An Act*

*To facilitate check truncation by authorizing substitute checks, to foster innovation in the check collection system without mandating receipt of checks in electronic form, and to improve the overall efficiency of the Nation's payments system, and for other purposes.*

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

*(a) SHORT TITLE- This Act may be cited as the 'Check Clearing for the 21st Century Act' or the 'Check 21 Act'.*

*(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:*

*Sec. 1. Short title; table of contents.*

*Sec. 2. Findings; purposes.*

*Sec. 3. Definitions.*

*Sec. 4. General provisions governing substitute checks.*

*Sec. 5. Substitute check warranties.*

*Sec. 6. Indemnity.*

*Sec. 7. Expedited recredit for consumers.*

*Sec. 8. Expedited recredit procedures for banks.*

*Sec. 9. Delays in an emergency.*

*Sec. 10. Measure of damages.*

*Sec. 11. Statute of limitations and notice of claim.*

*Sec. 12. Consumer awareness.*

*Sec. 13. Effect on other law.*

*Sec. 14. Variation by agreement.*

*Sec. 15. Regulations.*

*Sec. 16. Study and report on funds availability.*

*Sec. 17. Statistical reporting of costs and revenues for transporting checks between Federal Reserve banks.*

*Sec. 18. Evaluation and report by the Comptroller General.*

*Sec. 19. Depository services efficiency and cost reduction.*

*Sec. 20. Effective date.*

**SEC. 2. FINDINGS; PURPOSES.**

*(a) FINDINGS- The Congress finds as follows:*

*(1) In the Expedited Funds Availability Act, enacted on August 10, 1987, the Congress directed the Board of Governors of the Federal Reserve System to consider establishing regulations requiring Federal reserve banks and depository institutions to provide for check truncation, in order to improve the check processing system.*

*(2) In that same Act, the Congress--*

*(A) provided the Board of Governors of the Federal Reserve System with full authority to regulate all aspects of the payment system, including the receipt, payment, collection, and clearing of checks, and related functions of the payment system pertaining to checks; and*

*(B) directed that the exercise of such authority by the Board superseded any State law, including the Uniform Commercial Code, as in effect in any State.*

*(3) Check truncation is no less desirable in 2003 for both financial service customers and the financial services industry, to reduce costs, improve efficiency in check collections, and expedite funds availability for customers than it was over 15 years ago when Congress first directed the Board to consider establishing such a process.*

*(b) PURPOSES- The purposes of this Act are as follows:*

*(1) To facilitate check truncation by authorizing substitute checks.*

*(2) To foster innovation in the check collection system without mandating receipt of checks in electronic form.*

*(3) To improve the overall efficiency of the Nation's payments system.*

### **SEC. 3. DEFINITIONS.**

*For purposes of this Act, the following definitions shall apply:*

*(1) ACCOUNT- The term 'account' means a deposit account at a bank.*

*(2) BANK- The term 'bank' means any person that is located in a State and engaged in the business of banking and includes—*

*(A) any depository institution (as defined in section 19(b)(1)(A) of the Federal Reserve Act);*

*(B) any Federal reserve bank;*

*(C) any Federal home loan bank; or*

*(D) to the extent it acts as a payor—*

*(i) the Treasury of the United States;*

*(ii) the United States Postal Service;*

*(iii) a State government; or*

*(iv) a unit of general local government (as defined in section 602(24) of the Expedited Funds Availability Act).*

*(3) BANKING TERMS-*

*(A) COLLECTING BANK- The term 'collecting bank' means any bank handling a check for collection except the paying bank.*

*(B) DEPOSITARY BANK- The term 'depository bank' means—*

*(i) the first bank to which a check is transferred, even if such bank is also the paying bank or the payee; or*

*(ii) a bank to which a check is transferred for deposit in an account at such bank, even if the check is physically received and indorsed first by another bank.*

*(C) PAYING BANK- The term 'paying bank' means—*

*(i) the bank by which a check is payable, unless the check is payable at or through another bank and is sent to the other bank for payment or collection; or*

*(ii) the bank at or through which a check is payable and to which the check is sent for payment or collection.*

*(D) RETURNING BANK-*

*(i) IN GENERAL- The term 'returning bank' means a bank (other than the paying or depository bank) handling a returned check or notice in lieu of return.*

*(ii) TREATMENT AS COLLECTING BANK- No provision of this Act shall be construed as affecting the treatment of a returning bank as a collecting bank for purposes of section 4-202(b) of the Uniform Commercial Code.*

*(4) BOARD- The term 'Board' means the Board of Governors of the Federal Reserve System.*

*(5) BUSINESS DAY- The term 'business day' has the same meaning as in section 602(3) of the Expedited Funds Availability Act.*

*(6) CHECK- The term 'check'—*

*(A) means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection or return, including a substitute check and a travelers check; and*

*(B) does not include a noncash item or an item payable in a medium other than United States dollars.*

*(7) CONSUMER- The term 'consumer' means an individual who—*

*(A) with respect to a check handled for forward collection, draws the check on a consumer account; or*

*(B) with respect to a check handled for return, deposits the check into, or cashes the check against, a consumer account.*

*(8) CONSUMER ACCOUNT- The term 'consumer account' has the same meaning as in section 602(10) of the Expedited Funds Availability Act.*

*(9) CUSTOMER- The term 'customer' means a person having an account with a bank.*

*(10) FORWARD COLLECTION- The term 'forward collection' means the transfer by a bank of a check to a collecting bank for settlement or the paying bank for payment.*

*(11) INDEMNIFYING BANK- The term 'indemnifying bank' means a bank that is providing an indemnity under section 6 with respect to a substitute check.*

*(12) MICR LINE- The terms 'MICR line' and 'magnetic ink character recognition line' mean the numbers, which may include the bank routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with generally applicable industry standards.*



*(13) NONCASH ITEM- The term 'noncash item' has the same meaning as in section 602(14) of the Expedited Funds Availability Act.*

*(14) PERSON- The term 'person' means a natural person, corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization.*

*(15) RECONVERTING BANK- The term 'reconverting bank' means—*

*(A) the bank that creates a substitute check; or*

*(B) if a substitute check is created by a person other than a bank, the first bank that transfers or presents such substitute check.*

*(16) SUBSTITUTE CHECK- The term 'substitute check' means a paper reproduction of the original check that--*

*(A) contains an image of the front and back of the original check;*

*(B) bears a MICR line containing all the information appearing on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks;*

*(C) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and*

*(D) is suitable for automated processing in the same manner as the original check.*

*(17) STATE- The term 'State' has the same meaning as in section 3(a) of the Federal Deposit Insurance Act.*

*(18) TRUNCATE- The term 'truncate' means to remove an original paper check from the check collection or return process and send to a recipient, in lieu of such original paper check, a substitute check or, by agreement, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check), whether with or without subsequent delivery of the original paper check.*

*(19) UNIFORM COMMERCIAL CODE- The term "Uniform Commercial Code" means the Uniform Commercial Code in effect in a State.*

*(20) OTHER TERMS- Unless the context requires otherwise, the terms not defined in this section shall have the same meanings as in the Uniform Commercial Code.*

#### **SEC. 4. GENERAL PROVISIONS GOVERNING SUBSTITUTE CHECKS.**

*(a) NO AGREEMENT REQUIRED- A person may deposit, present, or send for collection or return a substitute check without an agreement with the recipient, so long as a bank has made the warranties in section 5 with respect to such substitute check.*

*(b) LEGAL EQUIVALENCE- A substitute check shall be the legal equivalent of the original check for all purposes, including any provision of any Federal or State law, and for all persons if the substitute check--*

*(1) accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and*

*(2) bears the legend: 'This is a legal copy of your check. You can use it the same way you would use the original check.'*

*(c) ENDORSEMENTS- A bank shall ensure that the substitute check for which the bank is the reconvertng bank bears all endorsements applied by parties that previously handled the check (whether in electronic form or in the form of the original paper check or a substitute check) for forward collection or return.*

*(d) IDENTIFICATION OF RECONVERTING BANK- A bank shall identify itself as a reconvertng bank on any substitute check for which the bank is a reconvertng bank so as to preserve any previous reconvertng bank identifications in conformance with generally applicable industry standards.*

*(e) APPLICABLE LAW- A substitute check that is the legal equivalent of the original check under subsection (b) shall be subject to any provision, including any provision relating to the protection of customers, of part 229 of title 12 of the Code of Federal Regulations, the Uniform Commercial Code, and any other applicable Federal or State law as if such substitute check were the original check, to the extent such provision of law is not inconsistent with this Act.*

#### **SEC. 5. SUBSTITUTE CHECK WARRANTIES.**

*A bank that transfers, presents, or returns a substitute check and receives consideration for the check warrants, as a matter of law, to the transferee, any subsequent collecting or returning bank, the depositary bank, the drawee, the drawer, the payee, the depositor, and any endorser (regardless of whether the warrantee receives the substitute check or another paper or electronic form of the substitute check or original check) that—*

*(1) the substitute check meets all the requirements for legal equivalence under section 4(b); and*

*(2) no depositary bank, drawee, drawer, or endorser will receive presentment or return of the substitute check, the original check, or a copy or other paper or electronic version of the substitute check or original check such that the bank, drawee, drawer, or endorser will be asked to make a payment based on a check that the bank, drawee, drawer, or endorser has already paid.*

**SEC. 6. INDEMNITY.**

*(a) INDEMNITY- A reconverting bank and each bank that subsequently transfers, presents, or returns a substitute check in any electronic or paper form, and receives consideration for such transfer, presentment, or return shall indemnify the transferee, any subsequent collecting or returning bank, the depository bank, the drawee, the drawer, the payee, the depositor, and any endorser, up to the amount described in subsections (b) and (c), as applicable, to the extent of any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.*

*(b) INDEMNITY AMOUNT-*

*(1) AMOUNT IN EVENT OF BREACH OF WARRANTY- The amount of the indemnity under subsection (a) shall be the amount of any loss (including costs and reasonable attorney's fees and other expenses of representation) proximately caused by a breach of a warranty provided under section 5.*

*(2) AMOUNT IN ABSENCE OF BREACH OF WARRANTY- In the absence of a breach of a warranty provided under section 5, the amount of the indemnity under subsection (a) shall be the sum of--*

*(A) the amount of any loss, up to the amount of the substitute check; and*

*(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation).*

*(c) COMPARATIVE NEGLIGENCE-*

*(1) IN GENERAL- If a loss described in subsection (a) results in whole or in part from the negligence or failure to act in good faith on the part of an indemnified party, then that party's indemnification under this section shall be reduced in proportion to the amount of negligence or bad faith attributable to that party.*

*(2) RULE OF CONSTRUCTION- Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.*

*(d) EFFECT OF PRODUCING ORIGINAL CHECK OR COPY-*

*(1) IN GENERAL- If the indemnifying bank produces the original check or a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated) or is otherwise sufficient to determine whether or not a claim is valid, the indemnifying bank shall--*

*(A) be liable under this section only for losses covered by the indemnity that are incurred up to the time that the original check or copy is provided to the indemnified party; and*

*(B) have a right to the return of any funds it has paid under the indemnity in excess of those losses.*

*(2) COORDINATION OF INDEMNITY WITH IMPLIED WARRANTY- The production of the original check, a substitute check, or a copy under paragraph (1) by an indemnifying bank shall not absolve the bank from any liability on a warranty established under this Act or any other provision of law.*

*(e) SUBROGATION OF RIGHTS-*

*(1) IN GENERAL- Each indemnifying bank shall be subrogated to the rights of any indemnified party to the extent of the indemnity.*

*(2) RECOVERY UNDER WARRANTY- A bank that indemnifies a party under this section may attempt to recover from another party based on a warranty or other claim.*

*(3) DUTY OF INDEMNIFIED PARTY- Each indemnified party shall have a duty to comply with all reasonable requests for assistance from an indemnifying bank in connection with any claim the indemnifying bank brings against a warrantor or other party related to a check that forms the basis for the indemnification.*

**SEC. 7. EXPEDITED RECREDIT FOR CONSUMERS.**

*(a) RECREDIT CLAIMS-*

*(1) IN GENERAL- A consumer may make a claim for expedited recredit from the bank that holds the account of the consumer with respect to a substitute check, if the consumer asserts in good faith that--*

*(A) the bank charged the consumer's account for a substitute check that was provided to the consumer;*

*(B) either--*

*(i) the check was not properly charged to the consumer's account; or*

*(ii) the consumer has a warranty claim with respect to such substitute check;*

*(C) the consumer suffered a resulting loss; and*

*(D) the production of the original check or a better copy of the original check is necessary to determine the validity of any claim described in subparagraph (B).*

*(2) 40-DAY PERIOD- Any claim under paragraph (1) with respect to a consumer account may be submitted by a consumer before the end of the 40-day period beginning on the later of--*



*(A) the date on which the financial institution mails or delivers, by a means agreed to by the consumer, the periodic statement of account for such account which contains information concerning the transaction giving rise to the claim; or*

*(B) the date on which the substitute check is made available to the consumer.*

*(3) EXTENSION UNDER EXTENUATING CIRCUMSTANCES- If the ability of the consumer to submit the claim within the 40-day period under paragraph (2) is delayed due to extenuating circumstances, including extended travel or the illness of the consumer, the 40-day period shall be extended by a reasonable amount of time.*

*(b) PROCEDURES FOR CLAIMS-*

*(1) IN GENERAL- To make a claim for an expedited recredit under subsection (a) with respect to a substitute check, the consumer shall provide to the bank that holds the account of such consumer--*

*(A) a description of the claim, including an explanation of--*

*(i) why the substitute check was not properly charged to the consumer's account; or*

*(ii) the warranty claim with respect to such check;*

*(B) a statement that the consumer suffered a loss and an estimate of the amount of the loss;*

*(C) the reason why production of the original check or a better copy of the original check is necessary to determine the validity of the charge to the consumer's account or the warranty claim;  
and*

*(D) sufficient information to identify the substitute check and to investigate the claim.*

*(2) CLAIM IN WRITING-*

*(A) IN GENERAL- The bank holding the consumer account that is the subject of a claim by the consumer under subsection (a) may, in the discretion of the bank, require the consumer to submit the information required under paragraph (1) in writing.*

*(B) MEANS OF SUBMISSION- A bank that requires a submission of information under subparagraph (A) may permit the consumer to make the submission electronically, if the consumer has agreed to communicate with the bank in that manner.*

*(c) RECREDIT TO CONSUMER-*

*(1) CONDITIONS FOR RECREDIT- The bank shall recredit a consumer account in accordance with paragraph (2) for the amount of a substitute check that was charged against the consumer account if--*

*(A) a consumer submits a claim to the bank with respect to that substitute check that meets the requirement of subsection (b); and*

*(B) the bank has not--*

*(i) provided to the consumer--*

*(I) the original check; or*

*(II) a copy of the original check (including an image or a substitute check) that accurately represents all of the information on the front and back of the original check, as of the time at which the original check was truncated; and*

*(ii) demonstrated to the consumer that the substitute check was properly charged to the consumer account.*

*(2) TIMING OF RECREDIT-*

*(A) IN GENERAL- The bank shall recredit the consumer's account for the amount described in paragraph (1) no later than*

*the end of the business day following the business day on which the bank determines the consumer's claim is valid.*

*(B) RECREDIT PENDING INVESTIGATION- If the bank has not yet determined that the consumer's claim is valid before the end of the 10th business day after the business day on which the consumer submitted the claim, the bank shall recredit the consumer's account for--*

*(i) the lesser of the amount of the substitute check that was charged against the consumer account, or \$2,500, together with interest if the account is an interest-bearing account, no later than the end of such 10th business day; and*

*(ii) the remaining amount of the substitute check that was charged against the consumer account, if any, together with interest if the account is an interest-bearing account, not later than the 45th calendar day following the business day on which the consumer submits the claim.*

*(d) AVAILABILITY OF RECREDIT-*

*(1) NEXT BUSINESS DAY AVAILABILITY- Except as provided in paragraph (2), a bank that provides a recredit to a consumer account under subsection (c) shall make the recredited funds available for withdrawal by the consumer by the start of the next business day after*

*the business day on which the bank recredits the consumer's account under subsection (c).*

*(2) SAFEGUARD EXCEPTIONS- A bank may delay availability to a consumer of a recredit provided under subsection (c)(2)(B)(i) until the start of either the business day following the business day on which the bank determines that the consumer's claim is valid or the 45th calendar day following the business day on which the consumer submits a claim for such recredit in accordance with subsection (b), whichever is earlier, in any of the following circumstances:*

*(A) NEW ACCOUNTS- The claim is made during the 30-day period beginning on the business day the consumer account was established.*

*(B) REPEATED OVERDRAFTS- Without regard to the charge that is the subject of the claim for which the recredit was made--*

*(i) on 6 or more business days during the 6-month period ending on the date on which the consumer submits the claim, the balance in the consumer account was negative or would have become negative if checks or other charges to the account had been paid; or*

*(ii) on 2 or more business days during such 6-month period, the balance in the consumer account was negative or would have become negative in the amount of \$5,000 or*

*more if checks or other charges to the account had been paid.*

*(C) PREVENTION OF FRAUD LOSSES- The bank has reasonable cause to believe that the claim is fraudulent, based on facts (other than the fact that the check in question or the consumer is of a particular class) that would cause a well-grounded belief in the mind of a reasonable person that the claim is fraudulent.*

*(3) OVERDRAFT FEES- No bank that, in accordance with paragraph (2), delays the availability of a recredit under subsection (c) to any consumer account may impose any overdraft fees with respect to drafts drawn by the consumer on such recredited amount before the end of the 5-day period beginning on the date notice of the delay in the availability of such amount is sent by the bank to the consumer.*

*(e) REVERSAL OF RECREDIT- A bank may reverse a recredit to a consumer account if the bank—*

*(1) determines that a substitute check for which the bank recredited a consumer account under subsection (c) was in fact properly charged to the consumer account; and*

*(2) notifies the consumer in accordance with subsection (f)(3).*

*(f) NOTICE TO CONSUMER-*

*(1) NOTICE IF CONSUMER CLAIM NOT VALID- If a bank determines that a substitute check subject to the consumer's claim was in fact properly charged to the consumer's account, the bank shall send to the consumer, no later than the business day following the business day on which the bank makes a determination--*

*(A) the original check or a copy of the original check (including an image or a substitute check) that--*

*(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or*

*(ii) is otherwise sufficient to determine whether or not the consumer's claim is valid; and*

*(B) an explanation of the basis for the determination by the bank that the substitute check was properly charged, including a statement that the consumer may request copies of any information or documents on which the bank relied in making the determination.*

*(2) NOTICE OF RECREDIT- If a bank recredits a consumer account under subsection (c), the bank shall send to the consumer, no later than the business day following the business day on which the bank makes the recredit, a notice of--*

*(A) the amount of the recredit; and*

*(B) the date the recredited funds will be available for withdrawal.*

*(3) NOTICE OF REVERSAL OF RECREDIT- In addition to the notice required under paragraph (1), if a bank reverses a recredited amount under subsection (e), the bank shall send to the consumer, no later than the business day following the business day on which the bank reverses the recredit, a notice of--*

*(A) the amount of the reversal; and*

*(B) the date the recredit was reversed.*

*(4) MODE OF DELIVERY- A notice described in this subsection shall be delivered by United States mail or by any other means through which the consumer has agreed to receive account information.*

*(g) OTHER CLAIMS NOT AFFECTED- Providing a recredit in accordance with this section shall not absolve the bank from liability for a claim made under any other law, such as a claim for wrongful dishonor under the Uniform Commercial Code, or from liability for additional damages under section 6 or 10.*

*(h) CLARIFICATION CONCERNING CONSUMER POSSESSION- A consumer who was provided a substitute check may make a claim for an expedited recredit under this section with regard to a transaction involving*



*the substitute check whether or not the consumer is in possession of the substitute check.*

*(i) SCOPE OF APPLICATION- This section shall only apply to customers who are consumers.*

**SEC. 8. EXPEDITED RECREDIT PROCEDURES FOR BANKS.**

*(a) RECREDIT CLAIMS-*

*(1) IN GENERAL- A bank may make a claim against an indemnifying bank for expedited recredit for which that bank is indemnified if--*

*(A) the claimant bank (or a bank that the claimant bank has indemnified) has received a claim for expedited recredit from a consumer under section 7 with respect to a substitute check or would have been subject to such a claim had the consumer's account been charged;*

*(B) the claimant bank has suffered a resulting loss or is obligated to recredit a consumer account under section 7 with respect to such substitute check; and*

*(C) production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the customer account or any warranty claim connected with such substitute check.*

*(2) 120-DAY PERIOD- Any claim under paragraph (1) may be submitted by the claimant bank to an indemnifying bank before the end of the 120-day period beginning on the date of the transaction that gave rise to the claim.*

*(b) PROCEDURES FOR CLAIMS-*

*(1) IN GENERAL- To make a claim under subsection (a) for an expedited recredit relating to a substitute check, the claimant bank shall send to the indemnifying bank--*

*(A) a description of--*

*(i) the claim, including an explanation of why the substitute check cannot be properly charged to the consumer account; or*

*(ii) the warranty claim;*

*(B) a statement that the claimant bank has suffered a loss or is obligated to recredit the consumer's account under section 7, together with an estimate of the amount of the loss or recredit;*

*(C) the reason why production of the original check, another substitute check, or a better copy of the original check is necessary to determine the validity of the charge to the consumer account or the warranty claim; and*

*(D) information sufficient for the indemnifying bank to identify the substitute check and to investigate the claim.*

*(2) REQUIREMENTS RELATING TO COPIES OF SUBSTITUTE CHECKS- If the information submitted by a claimant bank pursuant to paragraph (1) in connection with a claim for an expedited recredit includes a copy of any substitute check for which any such claim is made, the claimant bank shall take reasonable steps to ensure that any such copy cannot be--*

*(A) mistaken for the legal equivalent of the check under section 4(b); or*

*(B) sent or handled by any bank, including the indemnifying bank, as a forward collection or returned check.*

*(3) CLAIM IN WRITING-*

*(A) IN GENERAL- An indemnifying bank may, in the discretion of the bank, require the claimant bank to submit the information required by paragraph (1) in writing, including a copy of the written or electronically submitted claim, if any, that the consumer provided in accordance with section 7(b).*

*(B) MEANS OF SUBMISSION- An indemnifying bank that requires a submission of information under subparagraph (A) may permit the claimant bank to make the submission*

*electronically, if the claimant bank has agreed to communicate with the indemnifying bank in that manner.*

*(c) RECREDIT BY INDEMNIFYING BANK-*

*(1) PROMPT ACTION REQUIRED- No later than 10 business days after the business day on which an indemnifying bank receives a claim under subsection (a) from a claimant bank with respect to a substitute check, the indemnifying bank shall--*

*(A) provide, to the claimant bank, the original check (with respect to such substitute check) or a copy of the original check (including an image or a substitute check) that—*

*(i) accurately represents all of the information on the front and back of the original check (as of the time the original check was truncated); or*

*(ii) is otherwise sufficient to determine the bank's claim is not valid; and*

*(B) recredit the claimant bank for the amount of the claim up to the amount of the substitute check, plus interest if applicable; or*

*(C) provide information to the claimant bank as to why the indemnifying bank is not obligated to comply with subparagraph (A) or (B).*

*(2) RECREDIT DOES NOT ABROGATE OTHER LIABILITIES- Providing a recredit under this subsection to a claimant bank with respect to a substitute check shall not absolve the indemnifying bank from liability for claims brought under any other law or from additional damages under section 6 or 10 with respect to such check.*

*(3) REFUND TO INDEMNIFYING BANK- If a claimant bank reverses, in accordance with section 7(e), a recredit previously made to a consumer account under section 7(c), or otherwise receives a credit or recredit with regard to such substitute check, the claimant bank shall promptly refund to any indemnifying bank any amount previously advanced by the indemnifying bank in connection with such substitute check.*

*(d) PRODUCTION OF ORIGINAL CHECK OR A SUFFICIENT COPY GOVERNED BY SECTION 6(d)- If the indemnifying bank provides the claimant bank with the original check or a copy of the original check (including an image or a substitute check) under subsection (c)(1)(A), section 6(d) shall govern any right of the indemnifying bank to any repayment of any funds the indemnifying bank has recredited to the claimant bank pursuant to subsection (c).*

#### **SEC. 9. DELAYS IN AN EMERGENCY.**

*A delay by a bank beyond the time limits prescribed or permitted by this Act shall be excused if the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions,*

*failure of equipment, or other circumstances beyond the control of a bank and if the bank uses such diligence as the circumstances require.*

## **SEC. 10. MEASURE OF DAMAGES.**

### **(a) LIABILITY-**

*(1) IN GENERAL- Except as provided in section 6, any person who, in connection with a substitute check, breaches any warranty under this Act or fails to comply with any requirement imposed by, or regulation prescribed pursuant to, this Act with respect to any other person shall be liable to such person in an amount equal to the sum of—*

*(A) the lesser of—*

*(i) the amount of the loss suffered by the other person as a result of the breach or failure; or*

*(ii) the amount of the substitute check; and*

*(B) interest and expenses (including costs and reasonable attorney's fees and other expenses of representation) related to the substitute check.*

*(2) OFFSET OF RECREDITS- The amount of damages any person receives under paragraph (1), if any, shall be reduced by the amount, if any, that the claimant receives and retains as a recredit under section 7 or 8.*

*(b) COMPARATIVE NEGLIGENCE-*

*(1) IN GENERAL- If a person incurs damages that resulted in whole or in part from the negligence or failure of that person to act in good faith, then the amount of any liability due to that person under subsection (a) shall be reduced in proportion to the amount of negligence or bad faith attributable to that person.*

*(2) RULE OF CONSTRUCTION- Nothing in this subsection reduces the rights of a consumer or any other person under the Uniform Commercial Code or other applicable provision of Federal or State law.*

**SEC. 11. STATUTE OF LIMITATIONS AND NOTICE OF CLAIM.**

*(a) ACTIONS UNDER THIS ACT-*

*(1) IN GENERAL- An action to enforce a claim under this Act may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 1-year period beginning on the date the cause of action accrues.*

*(2) ACCRUAL- A cause of action accrues as of the date the injured party first learns, or by which such person reasonably should have learned, of the facts and circumstances giving rise to the cause of action.*

*(b) DISCHARGE OF CLAIMS- Except as provided in subsection (c), unless a person gives notice of a claim to the indemnifying or warranting bank within 30 days after the person has reason to know of the claim and the identity of the indemnifying or warranting bank, the indemnifying or warranting bank is discharged from liability in an action to enforce a claim under this Act to the extent of any loss caused by the delay in giving notice of the claim.*

*(c) NOTICE OF CLAIM BY CONSUMER- A timely claim by a consumer under section 7 for expedited recredit constitutes timely notice of a claim by the consumer for purposes of subsection (b).*

## **SEC. 12. CONSUMER AWARENESS.**

*(a) IN GENERAL- Each bank shall provide, in accordance with subsection (b), a brief notice about substitute checks that describes—*

*(1) how a substitute check is the legal equivalent of an original check for all purposes, including any provision of any Federal or State law, and for all persons, if the substitute check--*

*(A) accurately represents all of the information on the front and back of the original check as of the time at which the original check was truncated; and*

*(B) bears the legend: 'This is a legal copy of your check. You can use it in the same way you would use the original check.'; and*



*(2) the consumer recredit rights established under section 7 when a consumer believes in good faith that a substitute check was not properly charged to the account of the consumer.*

*(b) DISTRIBUTION-*

*(1) EXISTING CUSTOMERS- With respect to consumers who are customers of a bank on the effective date of this Act and who receive original checks or substitute checks, a bank shall provide the notice described in subsection (a) to each such consumer no later than the first regularly scheduled communication with the consumer after the effective date of this Act.*

*(2) NEW ACCOUNT HOLDERS- A bank shall provide the notice described in subsection (a) to each consumer who will receive original checks or substitute checks, other than existing customers referred to in paragraph (1), at the time at which the customer relationship is initiated.*

*(3) MODE OF DELIVERY- A bank may send the notices required by this subsection by United States mail or by any other means through which the consumer has agreed to receive account information.*

*(4) CONSUMERS WHO REQUEST COPIES OF CHECKS- Notice shall be provided to each consumer of the bank that requests a copy of a check and receives a substitute check, at the time of the request.*

*(c) MODEL LANGUAGE-*

*(1) IN GENERAL- Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board shall publish model forms and clauses that a bank may use to describe each of the elements required by subsection (a).*

*(2) SAFE HARBOR-*

*(A) IN GENERAL- A bank shall be treated as being in compliance with the requirements of subsection (a) if the bank's substitute check notice uses a model form or clause published by the Board and such model form or clause accurately describes the bank's policies and practices.*

*(B) DELETION OR REARRANGEMENT- A bank may delete any information in the model form or clause that is not required by this Act or rearrange the format.*

*(3) USE OF MODEL LANGUAGE NOT REQUIRED- This section shall not be construed as requiring any bank to use a model form or clause that the Board prepares under this subsection.*

**SEC. 13. EFFECT ON OTHER LAW.**

*This Act shall supersede any provision of Federal or State law, including the Uniform Commercial Code, that is inconsistent with this Act, but only to the extent of the inconsistency.*

**SEC. 14. VARIATION BY AGREEMENT.**

*(a) SECTION 8- Any provision of section 8 may be varied by agreement of the banks involved.*

*(b) NO OTHER PROVISIONS MAY BE VARIED- Except as provided in subsection (a), no provision of this Act may be varied by agreement of any person or persons.*

**SEC. 15. REGULATIONS.**

*The Board may prescribe such regulations as the Board determines to be necessary to implement, prevent circumvention or evasion of, or facilitate compliance with the provisions of this Act.*

**SEC. 16. STUDY AND REPORT ON FUNDS AVAILABILITY.**

*(a) STUDY- In order to evaluate the implementation and the impact of this Act, the Board shall conduct a study of—*

*(1) the percentage of total checks cleared in which the paper check is not returned to the paying bank;*

*(2) the extent to which banks make funds available to consumers for local and nonlocal checks prior to the expiration of maximum hold periods;*

*(3) the length of time within which depository banks learn of the nonpayment of local and nonlocal checks;*

*(4) the increase or decrease in check-related losses over the study period; and*

*(5) the appropriateness of the time periods and amount limits applicable under sections 603 and 604 of the Expedited Funds Availability Act, as in effect on the date of enactment of this Act.*

*(b) REPORT TO CONGRESS- Before the end of the 30-month period beginning on the effective date of this Act, the Board shall submit a report to the Congress containing the results of the study conducted under this section, together with recommendations for legislative action.*

**SEC. 17. STATISTICAL REPORTING OF COSTS AND REVENUES FOR TRANSPORTING CHECKS BETWEEN RESERVE BANKS.**

*In the annual report prepared by the Board for the first full calendar year after the date of enactment of this Act and in each of the 9 subsequent annual reports by the Board, the Board shall include the amount of operating costs attributable to, and an estimate of the Federal Reserve banks' imputed revenues derived from, the transportation of commercial checks between Federal Reserve bank check processing centers.*

**SEC. 18. EVALUATION AND REPORT BY THE COMPTROLLER GENERAL.**

*(a) STUDY- During the 5-year period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall evaluate the implementation and administration of this Act, including--*

*(1) an estimate of the gains in economic efficiency made possible from check truncation;*

*(2) an evaluation of the benefits accruing to consumers and financial institutions from reduced transportation costs, longer hours for accepting deposits for credit within 1 business day, the impact of fraud losses, and an estimate of consumers' share of the total benefits derived from this Act; and*

*(3) an assessment of consumer acceptance of the check truncation process resulting from this Act, as well as any new costs incurred by consumers who had their original checks returned with their regular monthly statements prior to the date of enactment of this Act.*

*(b) REPORT TO CONGRESS- Before the end of the 5-year period referred to in subsection (a), the Comptroller General shall submit a report to the Congress containing the findings and conclusions of the Comptroller General in connection with the evaluation conducted pursuant to subsection (a), together with such recommendations for legislative and administrative action as the Comptroller General may determine to be appropriate.*

**SEC. 19. DEPOSITARY SERVICES EFFICIENCY AND COST REDUCTION.**

*(a) FINDINGS- The Congress finds as follows:*

*(1) The Secretary of the Treasury has long compensated financial institutions for various critical depository and financial agency services provided for or on behalf of the United States by--*

*(A) placing large balances, commonly referred to as 'compensating balances', on deposit at such institutions; and*

*(B) using imputed interest on such funds to offset charges for the various depository and financial agency services provided to or on behalf of the Government.*

*(2) As a result of sharp declines in interest rates over the last few years to record low levels, or the public debt outstanding reaching the statutory debt limit, the Department of the Treasury often has had to dramatically increase or decrease the size of the compensating balances on deposit at these financial institutions.*

*(3) The fluctuation of the compensating balances, and the necessary pledging of collateral by financial institutions to secure the value of compensating balances placed with those institutions, have created unintended financial uncertainty for the Secretary of the Treasury and for the management by financial institutions of their cash and securities.*

*(4) It is imperative that the process for providing financial services to the Government be transparent, and provide the information*

*necessary for the Congress to effectively exercise its appropriation and oversight responsibilities.*

*(5) The use of direct payment for services rendered would strengthen cash and debt management responsibilities of the Secretary of the Treasury because the Secretary would no longer need to dramatically increase or decrease the level of such balances when interest rates fluctuate sharply or when the public debt outstanding reaches the statutory debt limit.*

*(6) An alternative to the use of compensating balances, such as direct payments to financial institutions, would ensure that payments to financial institutions for the services they provide would be made in a more predictable manner and could result in cost savings.*

*(7) Limiting the use of compensating balances could result in a more direct and cost-efficient method of obtaining those services currently provided under compensating balance arrangements.*

*(8) A transition from the use of compensating balances to another compensation method must be carefully managed to prevent higher-than-necessary transitional costs and enable participating financial institutions to modify their planned investment of cash and securities.*

*(b) AUTHORIZATION OF APPROPRIATIONS FOR SERVICES RENDERED BY DEPOSITARIES AND FINANCIAL AGENCIES OF THE UNITED STATES- There are authorized to be appropriated for fiscal years*

*beginning after fiscal year 2003 to the Secretary of the Treasury such sums as may be necessary for reimbursing financial institutions in their capacity as depositaries and financial agents of the United States for all services required or directed by the Secretary of the Treasury, or a designee of the Secretary, to be performed by such financial institutions on behalf of the Secretary of the Treasury or another Federal agency, including services rendered before fiscal year 2004.*

*(c) ORDERLY TRANSITION-*

*(1) IN GENERAL- As appropriations authorized in subsection (b) become available, the Secretary of the Treasury shall promptly begin the process of phasing in the use of the appropriations to pay financial institutions serving as depositaries and financial agents of the United States, and transitioning from the use of compensating balances to fund these services.*

*(2) POST-TRANSITION USE LIMITED TO EXTRAORDINARY CIRCUMSTANCES-*

*(A) IN GENERAL- Following the transition to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury may use the compensating balances to pay financial institutions serving as depositaries and financial agents of the United States only in extraordinary situations where the Secretary determines that they are needed to ensure the fiscal*



*operations of the Government continue to function in an efficient and effective manner.*

*(B) REPORT- Any use of compensating balances pursuant to subparagraph (A) shall promptly be reported by the Secretary of the Treasury to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*

*(3) REQUIREMENTS FOR ORDERLY TRANSITION- In transitioning to the use of the appropriations authorized in subsection (b), the Secretary of the Treasury shall take such steps as may be appropriate to—*

*(A) prevent abrupt financial disruption to the functions of the Department of the Treasury or to the participating financial institutions; and*

*(B) maintain adequate accounting and management controls to ensure that payments to financial institutions for their banking services provided to the Government as depositaries and financial agents are accurate and that the arrangements last no longer than is necessary.*

*(4) REPORTS REQUIRED-*

*(A) ANNUAL REPORT-*

*(i) IN GENERAL- For each fiscal year, the Secretary of the Treasury shall submit a report to the Congress on the use of compensating balances and on the use of appropriations authorized in subsection (b) during that fiscal year.*

*(ii) INCLUSION IN BUDGET- The report required under clause (i) may be submitted as part of the budget submitted by the President under section 1105 of title 31, United States Code, for the following fiscal year and if so, the report shall be submitted concurrently to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*

*(B) FINAL REPORT FOLLOWING TRANSITION-*

*(i) IN GENERAL- Following completion of the transition from the use of compensating balances to the use of the appropriations authorized in subsection (b) to pay financial institutions for their services as depositaries and financial agents of the United States, the Secretary of the Treasury shall submit a report on the transition to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*

(ii) *CONTENTS OF REPORT-* The report submitted under clause (i) shall include a detailed analysis of--

(I) *the cost of transition;*

(II) *the direct costs of the services being paid from the appropriations authorized in subsection (b); and*

(III) *the benefits realized from the use of direct payment for such services, rather than the use of compensating balance arrangements.*

(d) *TECHNICAL AMENDMENT-* The second undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended--

(1) *in the third sentence, by inserting 'or any other asset of a Federal reserve bank' before the period at the end; and*

(2) *in the last sentence, by inserting ', or are otherwise held by or on behalf of,' after 'in the vaults of'.*

(e) *EFFECTIVE DATE-* Notwithstanding section 20, this section shall take effect on the date of the enactment of this Act.

#### **SEC. 20. EFFECTIVE DATE.**

*This Act shall take effect at the end of the 12-month period beginning on the date of the enactment of this Act, except as otherwise specifically provided in this Act.*