

The Responsibility of Signatories in Commercial Documents for Payment of the Document in Iranian Law in Comparison to French law and the Geneva Conventions Uniform Law

Rahim Mollahosseini¹

¹Departemant of Law, Zanjan Branch, Islamic Azad University, Zanjan, Iran

Correspondence: Rahim Mollahosseini, Departemant of Law, Zanjan Branch, Islamic Azad University, Zanjan, Iran. E-mail: R.Mollahosseini2014@gmail.com

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Abstract

Commercial documents which are the means of payment in commercial transactions can help build better business relationships including sales and transport, provide services and establish order between merchants and this role makes these documents more important and necessitates the existence of concise and comprehensive regulations about them. The author of this study is going to respond all questions in this regard as well as the commercial documents signatories' liability for the document's payment in Iranian Law in comparison to that in French Law and the Geneva Conventions uniform law in a descriptive-analytical way through a library study and note-taking by going directly to the sources and references.

Keywords: business documents, signatories, liability, payment, trade law

1. Introduction

Commercial documents are ordinary documents that do not have the credibility and recognition of official documents, but have been given benefits and advantages by the legislator in all countries, which make them different from and more credible and valid than ordinary documents. Iranian trade law has stated the provisions relating to bills of exchange, promissory notes and cheques, but it has not introduced those documents under the general title "commercial documents". French Commercial Law, from which the Iranian legislator has inspired has not introduced these documents as commercial documents, but has enacted different rules for each one of these documents.

Although bills of exchange, promissory notes and cheques are among documents and are subject to commercial law and are called commercial documents even if they are exchanged between non-businessmen, the general term of commercial documents is not limited to bills of exchange, promissory notes and cheques and the business world is full of documents that have such a title such as warehouse receipt, bearer papers, securities, bonds, stocks, bill and credit documents. However, in Iran, by commercial documents is usually meant documents that are similar in many respects to bill and have its features and they include not only bills of exchange, but also promissory notes and cheques (Eskini, 2014: 6).

Iran has not joined the Geneva uniform law, but because the convention has close coordination with Iranian Commercial Law and this law has been derived from the West trade law, the legal gaps in Iranian Commercial Law can be filled by the

West Commercial Law. According to Article 249 of the Iranian Commercial Law, the commercial documents' signatories have joint and several liability. Thus, if the document holder can go the proper way of "objection and referral" to the court, he can benefit from the advantages that exist for these documents. The benefits that Article 249 of Commercial Law has given to bills of exchange can also be extended to promissory notes and cheques, except that a cheque is not inherently commercial if it is issued between two non-businessmen. In addition, referral to one or more of the authorities will not lead to the transfer of the document holder's rights to others.

Solidarity is when several individuals are liable for the same debt at the same time. It has an exceptional aspect and is contrary to the principle and needs a particular law and contract. The legal basis of solidarity is Article 249 of the Commercial Law.

The solidarity principle is one of the most important principles common to business documents and thereby takes away from civic engagement. In the realm of civil rights, the principle of shared responsibility or non-solidarity is contrary to the principle and the responsibility of each of the makers, though extended to all of the demand and covering it completely, is different from them in terms of time of responsibility. The liability of the guarantor is within that of the principal and endorser has the right to resort to those responsible prior to him and their guarantors and the third-party's intervention appears at a specific time and after objection to abstention and non-payment.

With this description, business documents are documents that are tradable and transferable and represent the presence of a demand in due time in favor of the holder, facilitating the business transactions between traders. Among the most important of these documents are bills of exchange, promissory notes and cheques. Due to the widespread use of these documents in transactions and internal and external transfers, it is very important to examine the liability of the signatories of these documents in French and Iranian laws and the Geneva Convention in order to identify the legal gaps and shortcomings in this respect. Therefore, in this study, which was conducted using library method, the liability of signatories of commercial documents has been investigated in Iranian Law with a view to French law and the Geneva Uniform Law.

2. Literature

No research has been conducted so far about the liability of the signatories of business documents in Iranian Law with a view to French law and the Geneva Conventions Uniform Law, relevant researches have been done, the most important ones being as follow:

The studies having been done regarding commercial documents include:

- Barzeshabadi (2010) did a study called "the position of the principle of non-attention to the discrepancies in commercial documents in Iranian Law with the International Convention on the Rights of bills of exchange and promissory note (UNCITRAL)". He summarized the results of his study in the following way: the concept of this principle is that the maker of a commercial document cannot pose against one with goodwill a defense which he could rely on in his relations with the other makers of the document or with others. The aim of this document in commercial documents is further replacement of these documents for money. In Iranian Law, goodwill and trust basically have no effect on the holder's rights holder. Iranian Commercial Law has not recognized this principle and should be modified based on the UNCITRAL Convention.

- Mesgar Abdolabadi (2012) conducted a study called "Evaluation of commercial liability period in Iranian Commercial Law". The results can be stated as follows: Circulation of credits plays an important role in business operations. Workflow and its flow rate depends on the credits relying on commercial documents and otherwise, which involves ensuring the timely payment of the debt. Guarantees for commercial affairs can hardly be objective, because a plurality of the dealings does not allow for the security of the movable and immovable property. Different types of commercial reliabilities in Iranian Commercial Law have been examined in detail and the strengths and weaknesses of the positive laws in relation to commercial reliability have been specified.

Ghahramani (1999) carried out a study called "Liability of the signatories of business documents". The results can be stated as follow: In parallel with economic developments, countries have tried their best to reduce the shortcomings of the regulations of commercial documents by making use of the other countries' laws as comparative law. However, Iranian Commercial Law, which has been derived from French Commercial Law has had no changes since it was enacted, although French Commercial Law has undergone huge changes. This failure roots in the legislator's failure to enact an up-to-date law on the one hand, and is the result of the downturn in the economic and commercial structure of the country, the lack of widespread international commercial relations, lack of popularity of these documents especially in the relationship between businessmen and traders on the other.

Gharedaghi (2011) performed a study called "Evaluation of guarantor's liability in commercial documents based on Iranian Commercial Law and the Geneva Conventions". It was concluded that articles relating to that subject were more tangible and explicit and were more consistent with legal principles in the Geneva Convention, while in Iranian Commercial Law, the legislator has left some points unmentioned, has caused disagreement among the lawyers. Thus, the legislator is required to enact appropriate laws and try to resolve the existing ambiguities and integrate the domestic business rules and regulations with the international standards.

3. Advantages and Features of Commercial Documents

Commercial documents lie between official documents and ordinary documents in terms of having law privileges. This means that it has some advantages of official documents and in some cases, it has the advantages

of ordinary documents. In other words, it is a written official document developed near an official agent or in an office of notary public. Therefore, as business documents are outside the bounds of the definition of official documents, they are called ordinary documents. Still, they have benefits over ordinary documents which puts them in between the ordinary documents and official ones. The most important of such documents are described in the following.

3.1 The Joint and Several Liability of All Signatories

The purpose of the joint and several liability is that all those who sign commercial documents under any title (the issuer, the guarantor, etc.) are all liable against the commercial document's holder (Akbari, 1997: 38).

3.2 The Position and Legal-Commercial Effects of Signatures from the Perspective of Iranian Law and International Conventions

Business documents, in procedural and substantive dimensions, have various terms and conditions, each of which gives rise to certain consequences. Signature for commercial documents forms the basis of their validity and brings many rights and privileges for their holders, because a signature on documents such as cheques officially approves the issuance of them by their holders and legally makes the issuer liable for its payment. This has led to the fact that both the regulations of domestic law and international documents such as the 1931 Geneva Convention have mentioned complete regulations regarding the importance of signature as a part of the inherent identity of commercial documents, on which the provision of goals such as business and commerce depends. On this basis, signature is one of the basic conditions of commercial documents and perhaps the most important one, so that the validity of commercial documents relies on the signature of the document issuer. Therefore, if it becomes clear that that issuer has a forged signature or it belongs to someone without the capacity for that, such an issuer will have no reliability and commitment toward the holder of the commercial document. This liability has no conflict with the reliability of the other signatories of the business document, because liability in commercial documents is based on individuals' will and in the case of forgery or legal incapacity, will is not attributable to the person to whom the signature belongs.

However, it is notable that this does not mean that all commercial documents have to be signed and no other mechanism can replace signature; rather, certain documents will be considered legal and will have the legal support when they are sealed. From the perspective of commercial law, commercial documents create liability only when they are signed, and the legislator has in other cases and situations considered sealing equal to signature. The legislator in Article (246) of the Commercial Law has officially emphasized the validity and relevance of signatures in endorsement of business documents with exactly the following words "endorsements must be signed by the endorser..."

In addition, Article (223) of the Commercial Law about bills of exchange has explicitly said that the drawer's seal near his signature makes the bill valid and either one (seal or signature) is sufficient to create commitment for the drawer. According to that article, "bills of exchange should have the following conditions besides the drawer's signature or seal..."

The Legislator has acted in Article (308) of the Commercial Law regarding the issuance of promissory notes the same as bills of exchange and has considered the existence of either seal of signature sufficient for their legal validity. According to that article, besides seal and signature, it should have date and the following points ..."

However, this is not the end, as unlike in the case of bills of exchange and promissory notes, the legislator has validated cheques with the issuer's signature and has not mentioned his or her seal, implying that sealing cannot replace signature in the case of cheques. This is inferred from Article (311) of the Commercial Cod, according to which, "in cheques, the date and place of issuance must be written and signed by the issuer. Payment must not have a date".

According to the law of cheque issuance of 2003, although the legislator has not explicitly spoken of the necessity of the issuer's signature, the relevance of signatures in this law can be inferred from some legal provisions including Article (3) and Article 19. In this regard, Article 3 of the Law on cheques has said "cheque issuer should have cash in his or her account at the date indicated in the cheque and must not draw all or some of the cash from his or her bank account and also must not issue and write the cheque in a way that the bank avoids cashing it due to signature mismatch and other reasons. As it can be observed, the legislator has explicitly mentioned "signature mismatch" as one of the causes of non-payment, whereas no mention has been made of sealing. This approach shows that, according to the legislator, mere signature on the cheques is not enough. In line with this, Article 19 specifies; "if the cheque has been issued on behalf of the account owner, the cheque issuer and the account owner are liable for its payment. Additionally, the cheque's signatory will have criminal liability under the provisions of this law ". Also in this article, the legislator has explicitly talks of the cheque

issuer's signature and finds it with legal and criminal effects, without mentioning the validity of seal near or as an alternative to signature.

It is worth noting that in addition to the foregoing points, the legislator in the Commercial Law has in another case necessitated the signature without mentioning the individual's seal. This case is the third party that writes the dishonored bill of exchange as acceptance and this acceptance is dependent on its mentioning in the petition and his or her signature.

However, unlike commercial law, in the new bill of the commercial law and in the three types of business documents, signature is valid and in all legal matters and actions relating to commercial documents, what validates these documents is only signature and seal has no position, as expressed in Article (703) on issuance of bills of exchange, Article (710) on acceptance of bills of exchange, Article (717) Article on the third-party's acceptance, Article (719) on endorsements of bills of exchange, Article (729) on guarantees, Article (783) on the issuance of promissory notes and Article (788) on the issuance of cheques.

The point worth noting in the new law is the explicit assertion about the need for signature to validate business documents, which had been neglected in the previous commercial law. Thus, according to the recent legislation, whenever business documents are sealed, but not signed by their issuers, they will not be binding for the persons concerned.

3.3 The Principles and Rules of Business Documents from the Perspective of Iranian Commercial Law and International Conventions

Documents that are discussed here only include business documents including promissory notes and bills of exchange and cheques. Thus, these principles are described and analyzed in five principles.

3.3.1 The Principle of Unreliability of Objections

The Principle of Unreliability of Objections is a rule contrary to the general rules governing civil contracts, to the effect that the document maker (debtor) cannot defend against its owner in such a way that it corresponds with the relations of his and of former endorsers and the issuer. The main rationale behind this rule is creating confidence in the validity of these documents, because if we the maker is supposed to rely on all of the objections arising from his relations with the previous individuals, no confidence will remain any more and traders try to refrain from accepting such documents and subsequently the society will be deprived of the benefits of these documents. Determining and recognizing this use of commercial documents and its various manifestations (bills of exchange, promissory notes and cheques) requires a full understanding of the provisions, principles and rules governing them, but unfortunately this has not been discussed much in Iran and the rules enacted in this regard have only a very small role in explaining it (Golandi, 1994: 79). According to Article 17 of the Geneva Uniform Law, the principle of Non-reliability of Objections means that the owners of a signature under prosecution cannot rely on their prior personal relationships with the or previous holders of bills. By personal relationships is meant all transactional relationships that lead to the issuance or transfer of the document as well as such things as paying bills or barter, novation, which are done between the signature owners or drawer or previous holders (Barzeshabadi, 2010: 69).

3.3.2 The Principle of Independence of Signatures

The second principle that dominates over the commercial documents is the principle of independence of signatures. Under this principle, each signature on the document to any title (including the issuer or guarantor or endorser) is valid independent of the other signatures. So, if a problem (eg, claims of fraud) is raised about the endorser's signature, the issuer cannot refrain from paying the document to the holder in good faith, as the issuer has liability against the owner of the commercial document due to his or her signature.

Iranian courts have in several cases considered the endorser's claim for his signature forgery, even if his claim is true, as removing the cheque issuer's liability. These verdicts which have all been approved by the Supreme Court also reflect the principle of independence of signature. Therefore, if some signatures are recognized invalid for reasons such as legal incapacity, fraud or forgery or they result in non-obligation of one of the signatories due to any other problem, the obligation of the other signatories will remain as binding as it was before.

According to Article 10 of the 1931 Geneva Convention on the Cheques, "If the Cheque is signed by persons who are incapable of receiving obligation through the Cheque or the cheque has a forged signature or is signed by an unknown person, the liability of the other signatories of the cheque will remain unremoved." Article 7 of the 1930 Geneva Convention (on the bill of exchange) also has similar regulations. However, in Iranian Commercial Law, business law, no explicit provision exists on this issue (Fakhraei, 1997: 66).

3.3.3 The Principle of Independence of the Bounds of Obligation

A business document signatory is committed to pay for the document on its issuance or endorsements. This obligation arises from signing a commercial document that is independent of other debt instruments. Mere issuance and signing of business documents is the origin of the debt. Therefore, acquittal can only be achieved through the payment of the document. The practical result of this principle is that the claim of the business document payment to the previous holder of the document is not accepted, and if demandant claims that he has paid for the cheque to the demandant and he has a receipt for that claim, but the demandant claims that the cash is related to another debt and the Cheque is for another debt, then it is the maker of the commercial document who must prove the reason for the commercial document payment, because it is axiomatic that the debt arising from Cheques is an independent debt and the obligation will continue until the demandant holds the cheque (Sadeghi Mazidi, 2014: 48).

3.3.4 The Principle of Obligation

Under this principle, even in cases where the defendant's objections and defenses are hearable and effective in the result, so long as he does not prove his claim, he will be sentenced to his obligation. Thus, in the case of business documents, the demandant must bring no reason other than the document itself. It is the duty of the demandant to substantiate his claim if he claims his acquittal of obligation.

The lower court's decision in the verdict number 73/318/18 in 06.19.1995 in Branch 18 of the Supreme Court implies that the obligation is the axiom and the demandant's claim for payment to the holder of the previous Cheques is not legally claimable even in the case of veracity of the payment (ibid., 52-53).

3.3.5 The Principle of Indebtedness

If the recipient claims that the payment has been for the demand that he had already had from the payer, he must prove his claim. Here, the payer has no obligation to prove his lack of debt, because under Article 265 of the Civil Code, giving the property does not bring indebtedness. However, in commercial documents, what is the axiom is indebtedness of the document signatory. Therefore, if one gives another a commercial document, it is axiomatic that he is indebted to that person.

4. The Effects of the Joint and Several Liability of Commercial Documents in Iranian Law

4.1 *The Right for Debt Collection*

One of the most important effects of solidarity is possibility for the holder to all of the signatories, including the issuer, drawee, endorser or endorsers. According to the principle of independence of signatures, as soon as the commercial document is signed, the makers will independently have liability against its holder (the creditor). The purpose of Article 249 of Commercial Law is also to guarantee the right of the holders of these documents so that the creditor can seek to collect the personal security or securities in order to collect his or her own debt and the holder can easily receive the cash of the documents regardless of any personal objection by referring to all of the makers of the commercial documents.

4.2 *The Creditor's Right to Bring a Suit against Each One of the Signatories*

The business document holder has the right to bring a lawsuit against all of the signatories. The holder of the bill of exchange or promissory notes and cheques can legally prosecute each one of the signatories individually or collectively pursuant to Article 249 of Commercial Law and bring a lawsuit against each or every one of them. Bringing a suit against one or more signatories will not lead to extinguishment of the right to resort to the other signatories, and even if a debt relies on identical security, having the identical security will not prevent the holder to resort to the signatories.

4.3 *The Effect of the Bankruptcy of Any of the Signatories*

In order to support the commercial document holder, the legislator does not impose the bankruptcy of any of the signatories to the other persons liable for it. Thus, if one or more of those liable for draft, promissory note or Cheque go bankrupt, the other signatories assume their share and hence the holder of the document (creditor) will receive no harm. (Article 251 of Commercial Law). This article is dominant over the principle of creditors' equality in bankruptcy rights and gives the owner of the commercial document more right to receive his or her demand than the ordinary creditors so that he or she can receive the total amount stated in the business document from the deputy administrators of the businessman who has gone bankrupt.

4.4 *The Retention of the Securities and Guarantees*

As these documents are abstract, the obligations and defenses are capable of being judicially examined only in

the direct and personal relations of the holders of these documents (the drawer, the drawee, the former owner, the endorser, transferee), because when a commercial document is transferred via repeated endorsements, it will be abstracted from its original relation and the signatories will no longer have any right to object or defend against the holder. For example, the invalidity or abrogation of a signature will not result in the invalidation of the other signatures.

4.5 Lack of Termination of the Principal's Obligation with Extinction of the Guarantor's Obligation

In business documents, the nature of the obligations of each of the signatories is independent and has the characteristics of the obligations of bill of exchange. This obligation is one-sided; that is the obligations of each party (other than that of the guarantor that has the accessory feature) against the creditor are independent by nature; therefore, if the guarantor's obligations were extinguished under certain circumstances, this will lead to the termination of the principal's obligation.

4.6 Acquittal of the Other Signatories via Equal Payment of the Debt by Each of the Signatories

As mentioned, the nature of solidarity is numerous obligations to pay a debt. In other words, a debt is to be paid jointly and that debt is "obligation to pay a certain amount of cash at maturity of the debt. Thus, the payment obligation on the part of any of the signatories acquits the other signatories from the debt. Article 268 of the Commercial Law specifies in this respect: "If a part of the bill of exchange is paid, the drawer and the endorsers will be equally acquitted and the holder of the bill of exchange just might complain about the rest."

5. The Liability of the Signatories of the Bill of Exchange for Payment

Since solidarity in commercial documents validates these documents, we deal in this part with the liability of each signatory of the bill of exchange, which is the most important special commercial document:

5.1 The Joint and Several Liability of the Signatories of the Bill of Exchange

Since all those who have signed the bill of exchange as the drawee, endorser, third acceptor and guarantor are considered the debtor to the holder of the bill of exchange, in the event of non-payment of the bill in due time, the holder can bring a lawsuit against each one of them after complaining about the non-payment of the claim. Article 249 of Commercial Law specifies that the holder of the bill of exchange "can resort to each one of them, a few of them or all of them, however he desires", without having to comply with the order of endorsement in terms of date. Each one of the endorsers has the same right toward the drawer and endorsers prior to him or her. An issuer who pays for the bill of exchange, pursuant to Article 249, will have the right to refer to the drawee, provided that he had already given that to the drawee. The issuer comes to have this right if the drawee has accepted the bill of exchange; otherwise when he has not accepted the bill of exchange, the issuer will have no right to resort to him or her and should appeal to the civil rights law for that or for any possible losses or damages.

Bringing a lawsuit against one or more of the signatories will not lead to the extinction of the right of resort to other signatories. These rules have also been predicted by the Geneva Uniform Law (Article 47) and they are nothing but the implementation of the general rules of joint and several liability. The implementation of these rules do not end in the payment of the bill of exchange by the endorser and guarantors and issuer.

If the bill of exchange is not accepted or paid by the drawee, all of the signatories, especially the issuer should be made aware of its time as soon as possible. This awareness makes it possible for them to take measures to prevent from their loss. In Iranian Commercial Law, according to the following two articles, this is the responsibility of the holder of the bill of exchange as well as the endorsers:

Article 284: "the bill holder who has been complained due to non-payment must, within ten days of the complaint, inform the one to whom he has assigned the bill of exchange of his non-payment by an official declaration".

Article 285: "Each endorser must, within ten days from the date of reception of the notice, inform it to the former endorsers in the same way".

The Geneva uniform law has not specified any legal sanctions for the holder's failure to transmit a letter to the endorser and, on the contrary, it clearly states that the person who does not give a notice within the time period specified by the law will not lose his or her rights.

The last clause of Article 45 of the recent law which expresses this principle also adds that if there occurs a loss due to the holder's negligence, he will be liable to compensate for up to the nominal value of the bill of exchange.

5.2 The Joint and Several Liability of the Bill Issuer (Drawer)

The first person puts the bill of exchange into circulation and gives it the joint and several liability is the drawer. The issuance of the bill of exchange is by itself a commercial act, whether the issuer is a businessman or a non-businessman (Clause 8 of Article 2 of Commercial Law). By issuing the bill of exchange, the drawer makes himself obliged to pay for it at maturity and guarantees the acceptance of the bill of exchange near the drawee. Whether the bill of exchange is overdrawn or not, and whether the drawee accepts it or not does not have any effect on the drawee's joint and several liability and the holder can rely on Acts 237 and 249 of Commercial Law and claim the right to receive its cash from the drawer.

On the point of issuance and circulation, the bill of exchange is abstracted from its original source. Therefore, after it was issued and endorsed, the drawer cannot rely on objections such as invalidity of the transaction, incapacity, forgery of the signature, termination of the obligation and so on. The drawer may exempt himself from guaranteeing the acceptance of the bill of exchange, but not for its payment, because he has put the bill of exchange into circulation and has joint and several liability against the holder and non-compliance with the deadlines brought in Articles 286 and 287 will not lead to the extinction of the holder's right to resort to the drawer. However, if the holder of the bill of exchange does not observe the deadlines brought in the mentioned articles and these deadlines expire, the holder will lose the right to bring a suit against the drawer if the drawer proves that he has supplied the cash of the bill of exchange near the drawee.

5.3 The Joint and Several Liability of the Drawee

The drawee establishes and documents his or her joint and several liability near the holder (creditor) by accepting the bill of exchange. He will have no liability until he signs the bill of exchange. The bill of exchange should not be overdrawn if it is to be accepted by the drawee. The act of acceptance is considered unilateral by nature, and is based on the relationship between the drawer and the drawee. It is based on this relationship that the drawer issues the bill of exchange to the drawee. At time of issuance, the cash may be available or it may be provided at maturity. However, there is no condition as to the veracity of the issuance and it has no effect on the holder's rights. Therefore, if the compromise bill of exchange is accepted by the drawee, it will not lessen his joint and several liability. Acceptance means obligation to pay a certain amount of cash on maturity (Article 230 of the Commercial Law), which the drawee is committed to pay for it by accepting it, and his acceptance is not revocable and he will not have the right to dishonor it (Article 231 of the Commercial Law). When the drawee accepts the bill of exchange by signing it, he will actually be considered the original obligor of the bill and this obligation is based on the debt relationship between the drawer and the drawee. This is because the common of the drawer and the holder is that the holder claims the cash of the bill by returning to the drawee. The acceptance of the bill is an indication of the drawee's debt to the drawer. This acceptance indicates the obligation arising from the sheet of the bill, which has certain formal features. The act of acceptance does not merely indicate the existence of a debt relationship, but it has an establishing feature, whether the bill of exchange is overdrawn or not. Acceptance shows an independent commercial obligation. The principle of independence of signatures and their abstracted description involves that the drawee cannot have any objections against the holder when the bill of exchange is accepted by the drawee. The acceptance of the bill of exchange is an original, single and independent obligation and the drawee has to prepare the cash written in the bill for its beneficiary; otherwise, he will have joint and several liability.

5.4 The Joint and Several Liability of the Endorser or Endorsers

An endorser himself holds a bill of exchange that he transfers to another via endorsement. What makes the commercial documents transferrable and causes these documents to play the role of money in the exchanges is endorsement. Endorsement is not a simple transfer of claim, because first of all, it is different from claim transfer in terms of form and is done the same as transfer in civil law. Secondly, they are also different substantively. Thirdly, the subject of transfer of claim is general, whether in cash or otherwise, while the subject of endorsement is to transfer a certain amount of cash. With the transfer of the bill of exchange, the legal relationship between the endorser and the transferee will not be interrupted, but the endorser has liability against the transferee or the next holders who have earned the bill of exchange through endorsement. The endorser is the guarantor for both the acceptance of the cash of the bill of exchange and for its payment at the date of maturity. He may also guarantee the payment of the costs and damages resulting from non-payment or dishonor of the bill of exchange (Articles 237 and 250 of Commercial Law).

Liability for endorsement is joint and several liability in that it is done in order to guarantee the right of the document holder. This liability cannot be evaluated in terms of the contract of liability, because the endorser has once held the bill of exchange and must be liable for its payment and acceptance against the transferee. In

endorsement, the endorser's relationship with the direct transferee is not cut off, but he is also liable against the next endorsers for the acceptance and payment of the bill of exchange. The endorser's obligation is joint and several, independent and abstract liability and his signature is joint and several liability on the other hand and a principal and separate obligation on the other. Forgery of the signature, incapacity of some of the signatories, the signatories' bankruptcy and other possible objections or problems have no effect on the endorser's obligation toward the holder.

However, the endorser's obligation does not have a final aspect but the endorser can resort to the drawer, the drawee, or to any one of the endorsers prior to him and claim the payment cash. It is notable that in order for the holder to be legally capable of prosecuting the endorser or endorsers, he or she must act according to his or her legal obligations under Articles 280, 286 and 287 of Commercial Law; otherwise, according to Article 289 of Commercial Law, if the holder of the bill of exchange does not observe the legal deadlines for bringing the lawsuit, he will lose the right to do that, as the endorser will not have this right toward the endorser before him. As endorser also have the right to its predecessor in terms of endorsements.

In civil law, the claim transferer against the transferee is only the guarantor of the existence of the claim and does not guarantee the debtor's solvency. As for the bill of exchange, the endorser guarantees both the existence of the claim and the signatories' solvency. In fact, his obligation is that he will pay for the bill of exchange when it is not paid in due time for any reason.

Under Article 116 of the French Commercial Law, the endorser is obliged to accept and pay the bill of exchange, which is something about which the law is not explicit, but can be deduced from the provisions of Article 249 of the Commercial Law. Here, it is better to examine the legal nature and bounds of endorsement in order to identify the endorser's liabilities after the endorsement:

1. The legal nature of the endorser's liability

Although Article 119 of French Commercial Law specifies that the endorser is the "guarantor" of the acceptance or payment of the bill of exchange, the judicial precedent of this country does not consider such a guarantor subject to the regulations of civil guarantee, but considers his liability more than the guarantor's. The Court, in fact, has decided that the rules of civil law in the field guarantee are not applicable in "what includes ourselves", especially the rule whereby the guarantor will not be liable if the creditors' rights have disappeared against the principal (debtor) because of his indulgence.

In other words, even in such a case, the bill of exchange holder whose right against another one of the signatories has lapsed can resort to the endorser. These rules are also applicable in and under Article 249 of the Commercial Law, the holder has been given the right to resort to the endorser regardless of the obligation of the other signatories of the bill of exchange and only on condition of non-payment and complaint.

This suggests that in Iranian Law, the sponsor also has more liability than the guarantor and the rules of civil guarantee cannot be applied to him or her.

2. The endorser's bounds of liability

There is no problem in French law in this regard, as Article 119 of the Commercial Law of this country has explicitly given the endorser the right to rule out the acceptance or payment of the bill of exchange or one of these two alternatives. The first clause of the latter article also specifies that: "Except in the case of the condition contrary to the contract, the endorser is liable as to the acceptance or payment of the bill of exchange". While the endorser promises to accept and pay the bill of exchange against the immediate transferee, he can limit his or her obligation toward the holders after him. This is the condition referred to as "re-endorsement restriction", which has been predicted in the second clause of Article 119. The effect of such a provision is not that it make the bill of exchange unable to be endorsed, but such endorsement will have no liability for those who receive the bill of exchange after the transferee. This condition is different from the "without – the – order" condition, because if the bill of exchange is not to the order of somebody, its endorsement is impossible, and if endorsed, the endorsement is only a civil transfer and will be subject to its conditions.

In Iranian law, the issue in question is not very clear. The only case in which the endorsement liability can be limited is the case reflected in Article 276 of the Commercial Law, according to which, "If the endorser has determined a certain period of time for the request for acceptance, the holder of the bill of exchange must accept it in due time; otherwise, the endorser cannot make use of the regulations related to the bill of exchange". If limiting the drawer's liability was accepted by the legislator in terms of the guarantee for acceptance and payment, it would have predicted that, as it did in the case of Article 276.

6. Conclusion

Signature in business documents is considered both a formal and a substantive condition for those documents. If it is determined that the issuer had a forged signature or the signature belongs to a person without the capacity to sign the document, such an issuer will have no obligations and liabilities toward the business document holder.

This liability has no conflict with the liability of the other signatories of the commercial document, because liability in commercial documents is based on the persons' will and in the cases of forgery and legal incapacity, will is not attributable to the person to whom the signature belongs. In the cheque Issuance Law modified in 2003, although the legislator has not explicitly talked of the need for the issuer's signature, the relevance of signature in this law can be inferred from some articles such as Article 9 and Article 10. However, unlike commercial law, in the new bill of the commercial law and in the three types of business documents, signature is valid and in all legal matters and actions relating to commercial documents, what validates these documents is only signature and seal has no position, as expressed in Article (703) on issuance of bills of exchange, Article (710) on acceptance of bills of exchange, Article (717) Article on the third-party's acceptance, Article (719) on endorsements of bills of exchange, Article (729) on guarantees, Article (783) on the issuance of promissory notes and Article (788) on the issuance of cheques.

Cheques export law reform in 2003, lawmakers explicitly not spoken of the need to sign the issuer, but also from some legal relevance of signatures in the law, including Article (3) and Article 19 can be used. Unlike commercial law, trade law in the new bill and on three types of business documents, signatures have been mentioned and in all matters and legal actions relating to business documentation, that the realization of these documents is known, is only signed and place for seals besides the signature is not considered. As Article (703) in issuing bills of material (710) to accept you, female (717) to accept third-party material (719) in endorsements draft, Article (729) of guarantees, Article (783) on the issuance of promissory notes and Article (788) of Cheques exports has added to this entry.

The point worth mentioning in the bill of the new law is the explicit about the need for signature as for the guarantee of business documents, which has been neglected in the current trade law. Thus, according to recent legislation, when the commercial documents had been sealed, but not signed by the issuer, such a document would not be binding for the person concerned and he can refer to this defect or problem against the holders of the document either directly or indirectly.

Iranian Commercial Law has lots of gap about the non-reliability or limitation of those liable for commercial documents and there is no explicit provision as to whether to accept or deny it, although it may be inferred from the legal principles in some cases. However, explicit regulations have been predicted in the conventions under study such as the 1930 Geneva Convention on bill of exchange and promissory notes, the 1931 Geneva Convention on the Cheques, the United Nations Convention on international bills and promissory notes adopted in December 9, 1988 and the United Nations Commission on International Trade Law known as the UNCITRAL Convention.

In the legal system of Iran, the non-liability or liability –limiting condition is not absolutely acceptable regarding the issuers of commercial documents, especially in the case of promissory notes, bills of exchange and cheques as well as for the drawee who is the main maker for payment of the bill of exchange, because the acceptance of the mentioned conditions are incompatible with the main goal of commercial documents and injure their validity. However, there is less doubt as for the endorser and it can be accepted with regard to the legal principles including the principle of will authority and there are no explicit regulations in these conventions about the drawee concerning the condition of non-reliability.

Whoever signs a bill of exchange (regardless of the primary obligations among them) is considered liable to pay for it, anyone who legally has that, will have the legal right to receive the payment. Bringing a lawsuit against one or more of those liable for the payment will lead to extinction of the right of resort to the others who are liable for the bill of exchange. These rules have also been predicted by the Geneva Uniform Law (Article 47) and they are nothing but the implementation of the general rules of joint and several liability. The implementation of these rules do not end in the payment of the bill of exchange by the endorser and guarantors and issuer.

An issuer who pays for the bill of exchange, pursuant to Article 249, will have the right to refer to the drawee, provided that he had already given that to the drawee.

Issuer comes to have this right if the drawee has accepted the bill of exchange; otherwise when he has not accepted the bill of exchange, the issuer will have no right to resort to him or her and should appeal to the civil rights law for that or for any possible losses or damages.

In French law, the third party liability is just like the liability of the person in favor of whom the intervention has taken place. In Iranian Law, the third-party liability is also like the liability of the issuer and endorser. However, unlike French law, the liability of the third-party toward the owner of the bill of exchange does not differ depending on the time, you will have exactly the same liability as the person who has accepted the bill of exchange in favor of him or her.

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