

Law n° 2007-37 dated 4 June 2007, amending and completing some provisions of the trade code (1).

In the name of the people,

The Chamber of Deputies and the Chamber of Advisors having adopted,

The President of the Republic enacts the following law :

Article one - The provisions of the second sub paragraph of article 374, of article 402, of the second sub paragraph of article 408, of the third sub paragraph, of the ninth sub paragraph and of the tenth sub paragraph of article 410 ter, of article 410 ter bis, of article 411, of the fourth sub paragraph of article 411 quarter, of article 411 sexies and of article 412 ter are superseded as follows :

Article 374 (sub paragraph 2 new) : the opposition shall be formulated in writing and submitted to the drawee banking establishment or by any other means leaving a written trace.

Article 402 (new) : no act of the cheque holder may stand in for the protest except for the cases provided for by the provisions of article 410 ter relating to issuing cheques without funds.

Article 408 (sub paragraph 2 new) : the cheque bearer subject to a protest or a non-payment certificate may also obtain against the obligees in pursuance of the cheque an injunction to pay enforceable twenty four hours after notification notwithstanding appeal.

Article 410 ter (sub paragraph 3 new) : within the same deadline, the drawee banking establishment submits to a bailiff a notice including the literal transcription of the non-payment certificate with a regularization injunction within four bank working days as of the noticing date in accordance with the provisions of the article herein, failing which it will be subject to legal proceedings when the said regularization did not take place within the deadline set by article 412 ter of the code herein. The notice includes the drawer's injunction to abstain from using all the cheque forms in his possession or in that of his mandates other than that used for a direct withdrawal or for a certified funds withdrawal delivered by banking establishments as well as the obligation to refund them to the relevant establishments.

(1) preparatory works :

Discussion and adoption by the Chamber of Deputies during its session held on 8 May 2007.

Discussion and adoption by the Chamber of Advisors during its session held on 16 May 2007.

(sub paragraph 9 new) : after regularization, the drawer may recover and use the cheques forms.

(sub paragraph 10 new) : if the drawer do not proceed to a regularization, it is legally prohibited to use all the cheques forms delivered by the bank establishments other than those used for a direct withdrawal or a certified funds certificate. This prohibition continues till regularization in accordance with the provisions of articles 412 ter and 412 quarter of the code herein, or till the punishment be served, or the decision of a suspended sentences, or the fine payment, unless the court decides otherwise, or the extinction of the penalty by amnesty or by a limitation in proceedings , or a nolle prosequi following a termination decision.

Article 410 ter bis (new) : in the event of refusal to pay a cheque for a drawer's opposition, the drawee banking establishment shall draw up a non-payment certificate in accordance with the provisions of sub paragraph 2 of article 410 ter of the code herein and shall submit a copy to the bearer, the drawer and to the Central Bank during the following three bank working days. In addition, he shall keep the original cheque and submit it to the public prosecutor of the Republic within the same deadline with a copy of the non-payment certificate.

Article 411 (new) : is punished with five years prison sentence and by a fine worth forty percent of the cheque's amount or of the funds balance provided that it is not less than twenty percent of the cheque amount or of the funds balance :

- the person who issued a current cheque without funds or a cheque the funds of which is less than the cheque's amount, or withdrew all or part of the funds after issuing the cheque, or opposed to pay the drawee save the cases provided for in article 374 of the code herein,

- the person who, with full knowledge of the facts, accepted a cheque issued according to the conditions provided for in the previous sub paragraph,

- the person who knowingly, in the discharge of his functions, helps the cheque drawer, in the cases provided for in the above mentioned sub paragraph, to conceal the offence either by abstaining from proceeding to measures prescribed by law, or by failing the profession regulations and obligations.

The provisions of article 53 of the penal code do not apply to the fine provided for in sub paragraph one of the article herein.

Any banking establishment refusing to pay a cheque issued by the drawer relying on:

- a credit opened at this banking establishment and that was not legally revoked,

- overdraft facilities of deposit this banking establishment is used to granting the average amount of which is at least equal to the cheque's amount or to the funds balance, without carrying the proof of notification to the drawer of the said facilities withdrawal,

Is punished with a fine worth forty percent of the cheque's amount or of the funds balance without exceeding three thousand dinars.

Article 411 quarter (sub paragraph 4 new) : in all the cases provided for in articles 411 and 411 bis, the convicted person is obligatorily prohibited from using the cheque forms other than those used for a direct withdrawal or a certified funds withdrawal, and this during no less than two months and no more than five years as of serving the sentence, a limitation in proceedings or extinction by amnesty, without deducting the period of provisional prohibition, unless the court decides otherwise.

Article 411 sexties (new) : the central bank of Tunisia keeps a special register relating to cheques, on which are noted all the non-payment notifications, protests, prohibitions of cheque forms use, breach of these prohibitions, delivered judgments and any notification relating to the regularization, closing of accounts as well as all the relevant information collected by its departments and that shall be communicated to all the credit institutions under its control given its instructions thereon within a deadline not exceeding two working days as of their date of receipt. The central bank of Tunisia may control the proper implementation of the provisions of the section herein of the code, establish the infringements and inform the competent authorities.

The office of the prosecutor shall communicate to the central bank of Tunisia the judgments of the last resort and the decisions taken in this field within four working days as of their delivering date.

The relevant banking establishments shall, within a deadline not exceeding two bank working days, inform the central bank of Tunisia about the payment incidents and the drawer's break of the prohibition to use the cheques forms and to recover them, the oppositions to pay cheques and the bank accounts identifiers for which cheque forms were delivered and which were closed.

The other credit institutions shall inform the central bank of Tunisia about the cases of their unrecovered credits and about any other non payment cases within fifteen days as of their occurrence.

Article 412 ter (new) : failing regularization in accordance with the conditions set by article 410 ter of the code herein, the cheque without funds drawer may, for three months as of the expiry of the regularization deadline, pay the amount of the cheque or of the funds balance, and a ten percent interest computed per day as of the date of establishing the non-payment certificate and a fine for the benefit of the state worth ten percent of the total amount of the cheque or of the funds balance and reimburse the costs advanced by the banking establishment.

The cheque drawer shall furnish to the drawee banking establishment :

- the proof of the fine and its costs payment,
- the proof of the funds reconstitution within the bank with the interests provided for in paragraph one for the benefit of the beneficiary or of their deposit at the general treasury of Tunisia, or of a written document with authenticated signature or of a deed together with the original cheque evidencing the payment of the cheque or of its balance and of the said interest for the beneficiary.

- The regularization in accordance with the provisions of the article herein involves the possibility for the drawer to recover the cheque forms.

The drawee banking establishment shall deliver to the drawer a regularization certificate during the three bank working days following the regularization, and inform the central bank of Tunisia within the same deadline in order to accomplish the procedures provided for by article 411 sexties of the code herein.

Failing regularization within the deadline provided for by sub paragraph one of the article herein, the drawee banking establishment shall furnish within the three bank working days following the regularization deadline to the public prosecutor of the Republic within the competence of which falls its head office, a file obligatorily including a copy of the non-payment certificate and the minutes of notification including the notification to pay.

Each banking establishment shall keep a special register for the cheques without funds including obligatorily all the operations relating to cheque without funds as of the date of its referral to the court till the date of transferring the file to the public prosecutor of the Republic. The register shall include notably :

- the cheque number, its amount or the funds balance,
- the drawer's identity and if necessary that of his representative,
- the date of sending the notices provided for in article 410 ter,
- the date of the regularization if any.

The reliable means shall be used to keep and reserve the register free from any alteration. Technical data relating to the register keeping will be fixed by a circular of the central bank.

The keeping of the said register shall be supervised by the central bank.

Art. 2 - A last sub paragraph shall be to article 317, a subparagraph to article 374 which will be inserted right after the fourth sub paragraph, a third sub paragraph to article 408, a third sub paragraph to article 410 sexties, a fourth dash to article 411 ter, article 411 septies, a fourth and fifth dash to article 412, article 412 quarter, a last sub paragraph to article 674 and a fourth sub paragraph to article 732 shall be added to the trade code.

Article 317 (last sub paragraph): the presiding judge before whom the appeal is lodged may, if the enforcement is likely to cause an irreversible damage, orders exceptionally a one month stay of execution of the injunction subject of the proceedings.

The order of the stay of execution can not be delivered before hearing the parties. The decision of the presiding judge isn't subject to appeal.

Article 374 (sub paragraph 5) : the provisions of the previous sub paragraph do not apply to cheques drawn on accounts in convertible currency or dinars.

Article 408 (sub paragraph 3) : the presiding judge before whom the appeal is lodged may, if the enforcement is likely to cause an irreversible damage, order

exceptionally a one - month stay of execution of the injunction subject of the legal proceedings.

The order of the stay of execution can not be delivered before hearing the parties. The decision of the presiding judge isn't subject to appeal.

Article 410 sexties (sub paragraph 3) : if the opposition deals with cheque theft or loss, the public prosecutor of the Republic shall order a judicial investigation. The legal proceedings relating to issuing cheques without funds shall be halted until court decision .

Article 411 ter (fourth dash) : Anyone who, saved the cases of cheque theft or loss, refuses to reconstitute the cheque forms in his possession, notwithstanding the notice notified to him in accordance with articles 410 ter, 674 and 732 of the code herein.

Article 411 septies: any person, when receiving a cheque may verify in the central bank register mentioned in the previous article if there is an opposition to payment because of theft, loss or prohibitions taken against the drawer or the drawee account closing in accordance with the conditions and procedures set by circular of the central bank.

Any person, when receiving a cheque, may also verify at the drawee bank establishment the availability of sufficient funds at the time of the said verification in accordance with the conditions and procedures set by decree.

The banking establishments are liable for damages of data inaccuracy of which they informed the central bank as well as for any delay during transmission.

Article 412-fourth dash : any drawee banking establishment failing to inform the drawer about the obligation to reconstitute the cheque form in his/her possession or in his representatives' possession, and delivered to him by the banking establishments or, failing to inform him/her to abstain from using them in accordance with the provisions of articles 410 ter, 674 and 732 of the code herein.

Fifth dash: any drawee banking establishment accepting regularization upon expiry of the date limit or not complying with the conditions provided for by the section herein of the code or would have altered the register entries without prejudice to the punishments incurred by the person who has knowingly committed them, in accordance with the legislation in force.

Article 412 quarter : the regularization may take place during the legal proceedings and before delivering the final judgment through paying the amount of the cheque or of the funds balance with a ten percent interest computed per

day as of establishing a non-payment certificate, a fine equal to twenty percent of the total amount of the cheque or of the funds balance and restituting the costs.

The cheque drawer shall furnish the public prosecutor of the Republic or the court as the case may be with :

- the proof of the fine payment and the costs restitution,

- the proof of the funds reconstitution within the banking establishment with the interests provided for in paragraph one for the benefit of the beneficiary or of their deposit at the general treasury of Tunisia, or of a written document with authenticated signature or of a deed together with the original cheque establishing the payment of the cheque or of its balance and of the said interest for the beneficiary.

The regularization leads to the prosecution termination and the proceedings or lawsuit stop, and the possibility for the drawer to recover and use the cheque forms.

Article 674 (last sub paragraph) : the bank shall order the holder of the closed current account by all available means leaving a written trace to reconstitute cheque forms in his possession within a deadline not exceeding fifteen days as of the account closing date.

Article 732 (sub paragraph 4) : the bank shall order the holder of the closed current account by all available means leaving a written trace to reconstitute cheque forms in his possession within a deadline not exceeding fifteen days as of the account closing date.

Art. 3 - The last sub paragraph of article 410, the last sub paragraph of article 410 ter and the first, second, third and last sub paragraphs of article 411 quarter of the trade code are repealed.

Art. 4 - The regularization may be proceeded according to conditions provided for by sub paragraph one of article 412 ter to the head of the public prosecutor of the Republic or, if necessary, before the court for the files submitted by the banking establishments to the public prosecutor of the Republic before the enforcement of the law herein.

The provisions of sub paragraph 6 of article 412 ter of the code herein shall be applicable six months after the coming into force of the law herein.

The law herein shall be published in the Official Gazette of the Republic of Tunisia and implemented as law of the state.

Tunis, 4 June 2007.

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