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Regulation of the National Bank of Rwanda relating to Bouncing Cheques

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Rwanda

Regulation of the National Bank of Rwanda relating to Bouncing Cheques

Regulation 2310-18 of 2018

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Pursuant to Law No 48/2017 of 23/09/2017 governing the National Bank of Rwanda, especially in its Articles 6, 8, 9 and 10;

Pursuant to Law No 32/2009 of 18/11/2009 governing negotiable instruments especially in its articles 110, 111, 112;

Pursuant to Law No 47/2017 of 23/09/2017 governing the organisation of banking, especially in its article 4;

Pursuant to Law No 03/2010 of 26/02/2010 concerning payment system as modified to date, especially in article 22;

Pursuant to law No 40/2008 of 26/08/2008 establishing the organisation of micro finance activities, especially in its articles 5 and 6;

Pursuant to Regulation No 04/2013 of 27/08/2013 of the National Bank of Rwanda relating to cheque truncation, especially in articles 1, 2, 3, and 7;

Having reviewed the regulation No 006/2015 of 16/09/2015 of the National Bank of Rwanda relating to bouncing cheques;

The National Bank of Rwanda hereinafter referred to as the "Central Bank", decrees:

Chapter One
General provisions

Article One – Purpose

This Regulation aims at preventing issues relating to issuance of bouncing cheques and provide for penalties applicable to cheque defaulters.

Article 2 – Scope

This Regulation shall apply to bouncing cheques, the paying bank, the presenting bank, and the cheque defaulter.

Article 3 – Definitions

In this Regulation, the following shall mean:

1° Cheque: an unconditional order in writing that is addressed by its signatory to one bank or one financial institution and requires to pay on demand a sum certain in money to the drawer or to a specified person or to the bearer. The name of the bank or financial institution on which the check is drawn shall be clearly indicated;
2° Physical cheque: paper based document filled from the cheque book;

3° Truncated cheque: cheque truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing;

4° Bouncing cheque: physical or truncated cheque that is not paid due to lack of funds or sufficient funds on the drawer’s account within the validity period;

5° First incident: first presentation of a bouncing cheque or several bouncing cheques issued by a drawer to a bank or several banks at a same date, irrespective of the time when these bouncing cheques were presented for payment;

6° Subsequent incident: any presentation for payment of a bouncing cheque issued by a drawer after the first incident;

7° Paying Bank: a bank or a Micro finance institution at or through which a cheque is payable and to which the cheque is sent for payment;

8° Presenting Bank: bank or a Micro finance institution that receives the cheque from the customer, either directly or via a third party, or presents the cheque to the clearing house for clearing and settlement;

9° Cheque defaulter: a drawer whose cheque has bounced.

Chapter 2

Obligations of the paying bank and the drawer

Article 4 – Obligations of the paying bank

The paying bank has the following obligations:

1° Formally and clearly inform the customer on the use of the cheque before providing cheque books;

2° Formally inform the customer of the consequences of issuing bouncing cheques including related sanctions;

3° Formally notify the drawer on its bouncing cheque with detailed information in accordance with standard letter attached in appendix with copy to the National Bank of Rwanda for information;

4° Report all bouncing cheques to the National Bank of Rwanda and Credit Reference Bureau, in accordance with reporting requirements. For reporting purpose, the amount on bouncing cheque(s) denominated in foreign currency shall be converted in Rwandan francs using the exchange rate applicable on the presentation date;

5° Reject the expired cheque with mention ”expired cheque” even where there are no sufficient funds on the drawer’s account.

Article 5 – Obligations of the drawer

The drawer has the following obligations:

1° Hold sufficient funds on the account on the due date until the expiration of validity of the issued cheque; and

2° Officially inform the paying bank of the incident of loss or theft of the cheque or cheque book.
Chapter 3
Bouncing cheque

Article 6 – Characteristics of bouncing cheque

A cheque shall be considered as bouncing when:

1° it is not paid due to lack of funds or lack of sufficient funds on the drawee’s account within validity period; and

2° it is drawn on a closed account.

Chapter 4
Sanctions and removal of sanctions

Article 7 – Sanctions applicable to a cheque defaulter

Without prejudice to the criminal provisions applicable to the offence of issuing bouncing cheque, a cheque defaulter shall not be allowed to:

1° Access any credit facility in banks, microfinance institution or in any lending institution;

2° Be provided a new cheque book by any bank or micro finance institution;

3° Open a new account in a bank or in a microfinance institution.

In addition to sanctions stipulated in paragraph one of this article, a cheque defaulter shall return back all cheque books given to him by his banks or micro finance institutions.

Sanctions stipulated in paragraph one of this article shall apply for a period of six (6) months for the first incident and one year for subsequent incidents.

Article 8 – Conditions for removal of sanctions

The sanctions stipulated in Article 7 of this Regulation shall be removed subject to the following:

1° Proof of payment of all bouncing cheques drawn by the cheque defaulter and certified by the paying bank. This proof should indicate the date of settlement of the cheque;

2° Clearance letter from the National Public Prosecution Authority;

3° Payment of pecuniary sanction equivalent to 20% of the amount mentioned on each bouncing cheque; and

4° Completion of the sanction period specified in article 7 of this Regulation.

The Management of the paying bank shall on behalf of the cheque defaulter, apply to the National Bank of Rwanda for the removal of sanctions. The application file shall contain documents proving beyond any reasonable doubt that the requirements stipulated in paragraph one of this Article have been met.

The pecuniary sanction whose amount is specified in the paragraph one of this article shall be paid by the cheque defaulter and shall be equally shared between the paying bank and the National Bank of Rwanda. The paying bank shall transfer the portion of the National Bank of Rwanda and submit the proof together with the application file for removal of sanctions.
Article 9 – Reply to the application for removal of sanctions

Upon reception of a complete file as specified in article 8 of this regulation, the National Bank of Rwanda shall analyze the application and reply by a written letter to the applicant bank with a copy to all banks, other relevant financial institutions and the Credit Reference Bureau within a period of seven (7) working days.

Article 10 – Cheque reported as bouncing while untrue

A bank which reports a cheque as bouncing while untrue shall be charged a pecuniary sanction of three hundred thousand Rwandan Francs (FRW 300,000) by the National Bank of Rwanda for each cheque so reported.

Chapter 5
Final provisions

Article 11 – Repealing provision

The regulation N° 006/2015 of 16/09/2015 of the National Bank of Rwanda relating to bouncing cheques and all prior regulatory provisions inconsistent with this Regulation are hereby repealed.

Article 12 – Sanctions taken under repealed regulation and instructions

Cheque defaulters sanctioned under the repealed instruction shall comply with sanctions provided in this regulation.

Article 13 – Commencement

This Regulation shall come into force on the date of its publication in the Official Gazette of the Republic of Rwanda.