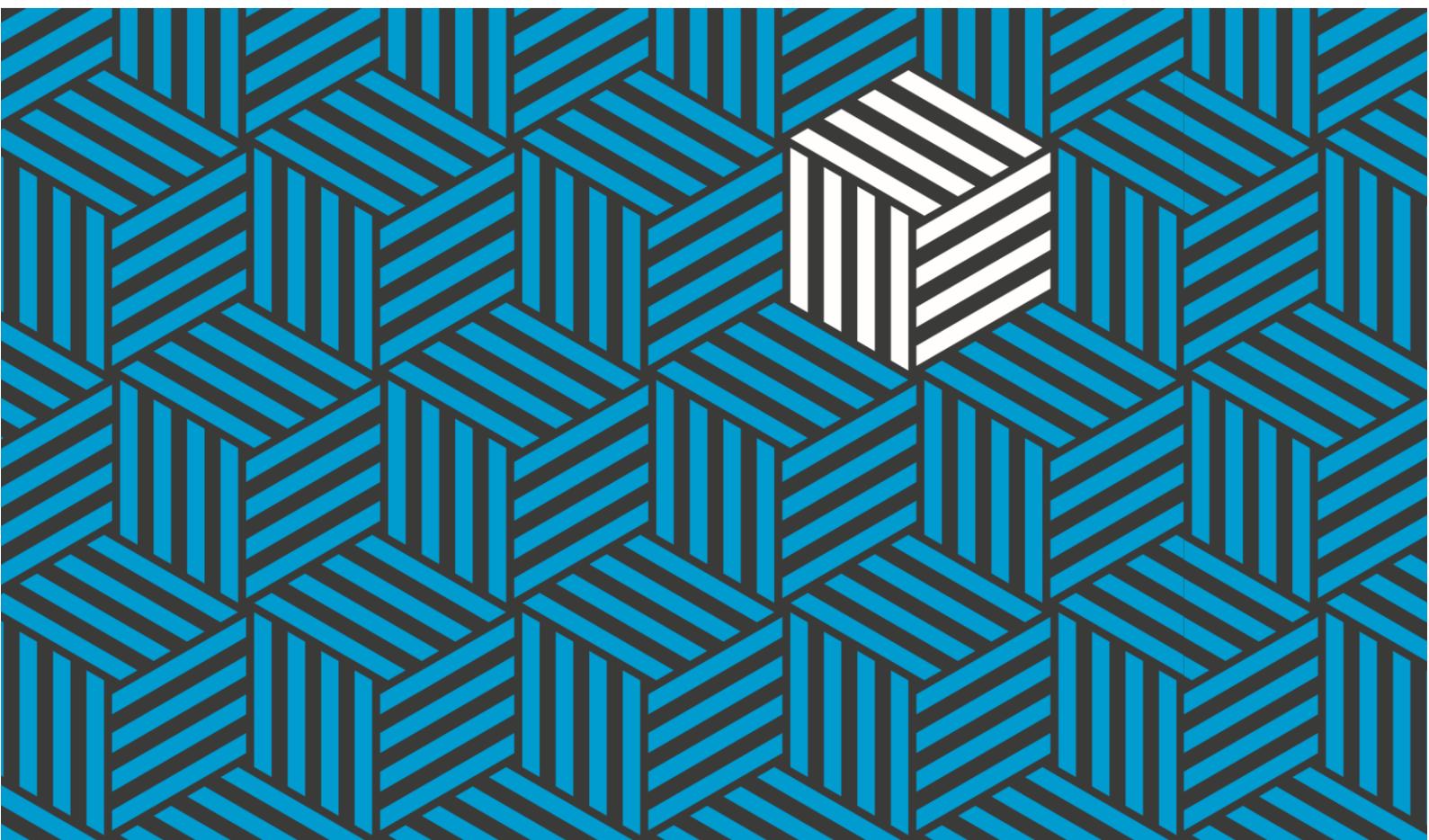


Report on the Legal Implications of Terminating the Cheque System

July 2024



Singapore Academy of Law
Law Reform Committee

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TABLE OF CONTENTS

CHAPTER 1.....	5
INTRODUCTION.....	5
CHAPTER 2.....	6
BACKGROUND INFORMATION ON CHEQUE PAYMENTS.....	6
A. HISTORICAL BACKGROUND	6
B. LEGAL POSITION RELATING TO CHEQUES UNDER THE BEA.....	8
C. SUMMARY OF THE CASE LAW RELATING TO CHEQUES	9
CHAPTER 3.....	11
ANALYSIS OF THE LEGAL RIGHTS AND LIABILITIES OF PARTIES IN A CHEQUE TRANSACTION.....	11
A. RIGHTS AND LIABILITIES OF THE PAYOR.....	12
B. RIGHTS AND LIABILITIES OF THE PAYEE	14
C. RIGHTS AND LIABILITIES OF THE PAYING BANK.....	14
D. RIGHTS AND LIABILITIES OF THE COLLECTING BANK	17
E. PARTIES' RIGHTS AND OBLIGATIONS IN RELATION TO POST-DATED CHEQUES 17	
CHAPTER 4.....	20
ANALYSIS OF THE IMPLICATIONS THAT MAY ARISE IN THE EVENT CHEQUES ARE ABOLISHED IN SINGAPORE	20
A. THE EDP SYSTEM.....	20
B. IMPLICATIONS IF CHEQUES ARE ABOLISHED IN SINGAPORE.....	22
C. CONCLUDING THOUGHTS	25

CHAPTER 1

INTRODUCTION

1.1 As part of its vision to become a Smart Nation, Singapore aims to eliminate cheques and transition to e-payment methods.¹ The Monetary Authority of Singapore (“MAS”) and the Payments Council have therefore proposed a roadmap for terminating the Singapore dollar (“SGD”) Cheque Truncation System (“CTS”) in the medium term. To this end, MAS intends to: (i) eliminate centrally-cleared cheques issued by corporates by 2025; and (ii) assist and encourage remaining users of centrally-cleared cheques to switch to alternative payment methods.²

1.2 This report addresses the legal implications of this intended termination of the cheque system. Specifically, it examines:

- (a) the background and history of cheques and the cheque system (in *Chapter 2*);
- (b) the established rights and obligations of the various parties in the cheque system (in *Chapter 3*); and
- (c) the implications of eliminating cheques and terminating the cheque system (including whether aspects of the system can be replicated in an alternative e-payments system) (in *Chapter 4*).

¹ MAS, “Consultation Paper on Roadmap to Terminate the SGD Cheque Truncation System – Eliminating Corporate Cheques by 2025” (2022) Consultation Paper P011-2022 at para 2.2; MAS, “E-Payments for Everyone’ – Keynote Speech by Mr Ong Ye Kung, Minister for Education and MAS’ Board Member, at the 45th Annual Dinner of The Association of Banks in Singapore on 20 June 2018” (20 June 2018) at paras 60-62, <<https://www.mas.gov.sg/news/speeches/2018/epayments-for-everyone>>.

² See MAS, “Consultation Paper on Roadmap to Terminate SGD CTS” (n 1) at para 1.1-1.2; MAS, “Response to Feedback Received on Roadmap to Terminate the SGD Cheque Truncation System – Eliminating Corporate Cheques by 2025” (2023) at para 1.1 and 1.3.

CHAPTER 2

BACKGROUND INFORMATION ON CHEQUE PAYMENTS

A. HISTORICAL BACKGROUND

2.1 The cheque has been described as possibly the most long-established payment system apart from physical money.³ Cheques are a special form of bill of exchange,⁴ which is itself the oldest form of negotiable instrument. In the United Kingdom (“UK”), cheques emerged in the 17th century. Traditionally, cheques had two functions: (i) to allow a customer to withdraw funds standing to the credit of his or her current account; and (ii) to pay sums due from the drawer to another person.⁵

2.2 In Singapore, the law governing cheques is primarily set out in the Bills of Exchange Act 1949 (“BEA”), as interpreted by the courts. The statute traces its origins to the UK’s Bills of Exchange Act 1882.⁶ For historical reasons, the law relating to cheques closely followed the law relating to bills of exchange, with the statutory provisions on cheques appended to those dealing with bills.⁷ However, banking law and practice has since evolved such that cheques, despite their origins, are now rarely negotiable. Rather, cheques typically constitute non-transferable payment orders or instructions.⁸ Hence, despite the continued applicability of the BEA, it has been argued that the legal consequences of cheques may be adequately governed by general agency principles (as between the drawer and his bank) as well as contractual principles (as between the payor and the payee).⁹

³ Ross Cranston *et al*, *Principles of Banking Law* (Oxford University Press, 3rd Ed, 2018) at p 371.

⁴ Bills of Exchange Act 1949 (2020 Rev Ed) (“BEA”) s 73(1); *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [57].

⁵ EP Ellinger *et al*, *Ellinger’s Modern Banking Law* (Oxford University Press, 5th Ed, 2011) at p 388.

⁶ (c 61) (UK). The English statute was reproduced, with slight modifications, in the Federation of Malaysia’s Bills of Exchange Ordinance (F.M. Ordinance 75 of 1949), the BEA’s predecessor statute. This ordinance was extended to Singapore, with modifications, by the Modification of Laws (Bills of Exchange) (Extension) Order, 1965 (L.N. 260/1965 (G.N. Sp. No. S 118/1965)).

⁷ AG Guest and MD Chalmers, *Chalmers and Guest on Bills of Exchange, Cheques and Promissory Notes* (Sweet & Maxwell, 17th Ed, 2009) at para 13-003.

⁸ BEA s 8(1); Ellinger (n 5) at pp 389–390, 488; Cranston (n 3) at p 374; John Barnard Byles and Nicholas Elliott, *Byles on Bills of Exchange and Cheques* (Sweet & Maxwell, 29th Ed, 2013) at para 21-001.

⁹ Cranston (n 3) at p 374.

2.3 The cheque system has also evolved over the decades. As user cheques proliferated in the 18th century, a cheque clearing procedure developed¹⁰ and was adopted in Singapore. Presenting banks would batch and transport cheques to the Automated Clearing House, which would sort the cheques for each paying bank's collection and verification.¹¹ Such cheque clearing was simplified with the advent of cheque truncation. In 2002, Singapore implemented the CTS, which allows cheques to be presented for payment by transmitting, via electronic means, an image of the cheque and its electronic payment information.¹²

2.4 Technological advancement has continued to alter not only the cheque system, but also the wider payments landscape. Given the typical use of cheques as a non-transferable payment order, cheques have been susceptible to replacement by more efficient methods of direct payment transfers between accounts. Hence, the use of cheques has declined markedly with the rise of electronic payments ("e-payments"). From 2016 to 2022, the annual cheque transaction volume in Singapore fell nearly 70%, from 61 million to less than 19 million. During the same period, payments made using other methods, such as Fast and Secure Transfers (FAST) and Inter-bank GIRO (GIRO), have gained popularity. As a result, the proportion of cheque transactions fell from 32% to 4%.¹³ Cheques hence have been in rapid or even "terminal" decline not only in Singapore, but also in many other jurisdictions.¹⁴ The decline in cheque usage also affects the commercial viability of the CTS, as its operating costs are highly fixed. If the cheque transaction volume declines by 30% year-on-year, MAS has projected that per-cheque clearing costs will minimally quintuple from 2021 to 2025.¹⁵ In fact, it is noted that many have never written a cheque and have no knowledge of how to properly draw a cheque.

2.5 These developments have prompted the proposed sunsetting of cheques. However, given the long history of cheques, an extensive body of law relating to cheques has developed over the past few centuries. The legal implications of terminating the cheque system hence should be carefully considered in light of these established principles and collective legal wisdom. To set the background, *Part B* of this chapter will examine the legal position relating to cheques under the BEA, while *Part C* will summarise key principles of the relevant case law relating to cheques.

¹⁰ See further Ellinger (n 5) at p 390.

¹¹ *Singapore Parliamentary Debates, Official Report* (23 July 2002) vol 75 at cols 704-705 (Lim Hng Kiang, Second Minister for Finance).

¹² BEA ss 89-90; *Singapore Parliamentary Debates, Official Report* (23 July 2002) vol 75 at cols 704-707 (Lim Hng Kiang, Second Minister for Finance).

¹³ MAS, "MAS Announces End-2025 Timeline to Eliminate Corporate Cheques" (28 July 2023) at para 3 <<https://www.mas.gov.sg/news/media-releases/2023/mas-announces-end-2025-timeline-to-eliminate-corporate-cheques>>; *Singapore Parliamentary Debates, Official Report* (19 September 2023) vol 95 (Lawrence Wong).

¹⁴ See, e.g., The Australian Government the Treasury, "A Strategic Plan for Australia's Payments System" (2023) 18 <<https://treasury.gov.au/publication/p2023-404960>>; UK Payments Council, *Progress Report: Delivering the National Payments Plan* (June 2010) at p 1.

¹⁵ MAS, "Consultation Paper on Roadmap to Terminate SGD CTS" (n 1) at para 2.4.

B. LEGAL POSITION RELATING TO CHEQUES UNDER THE BEA

2.6 A cheque is statutorily defined as “a bill of exchange drawn on a banker payable on demand”.¹⁶ Read together with the statutory definition of a bill of exchange, a cheque is an unconditional order in writing that is drawn on a banker, is signed by the person giving it, and requires the banker to pay on demand a sum certain in money to or to the order of a specified person or to bearer.¹⁷ Additionally, although adequate consideration is not expressly required by the statutory definition, in its absence, a cheque should be regarded as merely a revocable payment instruction.¹⁸

2.7 In general, the BEA provisions applicable to a bill of exchange payable on demand also apply to a cheque, subject to the modifications set out in Part 3 of the BEA.¹⁹ Part 3 pertains specifically to cheques drawn on a banker, and includes provisions relating to the presentment of cheques for payment, the revocation of a banker’s authority, crossed cheques, indorsement and other matters, as well as cheque truncation.²⁰

2.8 The crossing of cheques is a feature that Singapore has adopted from UK law.²¹ Cheques may be crossed generally or specially: (i) if a cheque has been crossed generally, payment may only be made to a banker; and (ii) if a cheque has been crossed specially, such that the crossing names a banker, then payment may only be made to the banker named in the crossing.²² The BEA also addresses the addition of the words “not negotiable” or “account payee” to a crossed cheque. If a person takes a crossed cheque marked “not negotiable”, he or she can neither obtain nor confer a better title than that of the transferor.²³ If a cheque is additionally or alternatively crossed “account payee”, then the cheque is non-transferable and only valid as between the parties thereto.²⁴ Given the widespread practice of crossing cheques “a/c payee only”, cheques typically take the form of non-transferable payment orders rather than negotiable cheques.

2.9 Apart from provisions relating to crossed cheques, the BEA also addresses matters such as the duties, rights and liabilities of the drawer/payor, paying bank and collecting bank.²⁵ Issues relating to the liabilities of these parties, as well as relating to post-dated cheques, are discussed in further detail in *Chapter 3*.

¹⁶ BEA s 73(1); for the definition of a bill of exchange, see BEA s 3.

¹⁷ A bill of exchange is defined in BEA s 3(1). With respect to the meaning of “payable on demand”, see further BEA s 10.

¹⁸ *Lomax Leisure Limited v Nicholas John Miller* [2007] EWHC 2508 (Ch) at [50].

¹⁹ BEA s 73(2).

²⁰ See BEA ss 74, 75, 76-82, 83-88 and 89-91, respectively.

²¹ For background on crossings, see Ellinger (n 5) at pp 412-413.

²² See BEA s 79(2).

²³ BEA s 81.

²⁴ BEA s 82(1).

²⁵ See, e.g., BEA ss 79-80, 83-84 and 86.

C. SUMMARY OF THE CASE LAW RELATING TO CHEQUES

2.10 In addition to the provisions of the BEA, the law governing cheques has also been shaped and interpreted by the courts. This section highlights some key principles that have emerged from the local case law in relation to cheques, focusing on the legal nature and effect of a cheque, as well as technological change. In addition, a more extensive discussion of the relevant case law on the rights and liabilities of the payor, payee, paying bank and collecting bank is set out in *Chapter 3*.

(1) Legal Nature and Effect of a Cheque

2.11 Case law has clarified the legal nature and effect of a cheque. A cheque, as a bill of exchange, evidences a separate and distinct contract. Even if a cheque is executed pursuant to an underlying transaction, it creates rights and obligations that are independent of any such contract or transaction. A payee therefore may rest his or her claim on the cheque alone.²⁶ Where an application is made for summary judgment in respect of a claim on a cheque, the general rule is that the court will give summary judgment save in exceptional circumstances.²⁷

2.12 Additionally, and relatedly, the cash equivalence principle gives a cheque important advantages over a mere promise to pay. Where the payor's payment obligation has fallen due but has not been met, the payee may, by legal action, effectively and efficiently convert the payor's promise to pay into cash. Moreover, in the (albeit atypical) case of negotiable cheques, the payee may, by negotiation, convert the payor's promise to pay into cash, even before the payor's payment obligation thereunder has fallen due.²⁸ As the court has stated, "[s]imply put: the drawer is obliged to pay now and argue later."²⁹ The cash equivalence principle hence has been described as deeply embedded in both procedural and commercial law, with the policy of the law being to ensure commercial efficacy.³⁰

2.13 Case law has also clarified the legal effect of a cheque in particular contexts. Where a cheque is accepted in payment of a debt, it is a conditional payment that operates to suspend the remedies of the creditor against the debtor until the cheque has been presented and dishonoured.³¹ In the construction context, a cheque has also been regarded as a form of security for advances given.³²

²⁶ *Wong Fook Heng v Amixco Asia Pte Ltd* [1992] 1 SLR(R) 654 at [13]; *City Hardware Pte Ltd v Goh Boon Chye* [2005] 1 SLR(R) 754 at [18]; *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2017] SGHC 58 at [49]; and *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [24].

²⁷ *Thomson Rubbers (India) Pte Ltd v Tan Ai Hock* [2012] 1 SLR 772 at [11]; and *Cheng Song Chuan v Chin Ivan* [2008] SGHC 39 at [73]. See also *Marina Sports v Alliance Richfield* [1990] 1 SLR(R) 385; *Ong Keh Choo v Paul Huntington Bernardo* [2018] SGHC 175; and *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246.

²⁸ *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [24]; *Wong Fook Heng v Amixco Asia Pte Ltd* [1992] 1 SLR(R) 654 at [13]; and *Cassa di Risparmio di Parma e Piacenza SpA v Rals International Pte Ltd* [2016] 1 SLR 79 at [152].

²⁹ *Cassa di Risparmio di Parma e Piacenza SpA v Rals International Pte Ltd* [2016] 1 SLR 79 at [152].

³⁰ *Ibid* at [151]; *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [70].

³¹ *Tan Chong Keng v Lim Bak Keng Vincent* [1985-1986] SLR(R) 496 at [11]; *Law Society of Singapore v Leong Pek Gan* [2016] 5 SLR 1091 at [50]; and *CSR South East Asia v Sunrise Insulation* [2002] 1 SLR(R) 1079.

³² *Voltas Ltd v Ng Theng Swee* [2023] SGHC 245 at [17].

(2) Cheques and Technological Change

2.14 In addition to these long-established principles, recent case law also addresses issues raised by the advancement of technology. On the one hand, the courts have had to clarify the effect of technological change on the legal nature of cheques; and on the other hand, the courts have grappled with issues relating to newer payment systems by applying legal principles relating to cheques.

2.15 First, case law has addressed how technological and accompanying legislative changes impact cheques. Specifically, in relation to the CTS, the Singapore High Court has clarified that the introduction of the system was not intended to affect the legal nature of cheques – whether in terms of their negotiability, their legal efficacy or the contractual obligations and liabilities arising therefrom.³³

2.16 Second, legal principles relating to cheques have also been analogised and applied to other payment systems. For example, English authority has analogised between payments by direct debit and payments by cheque (although this comparison has been criticised).³⁴

2.17 Precedent hence demonstrates both the effect of technological change on the law of cheques, as well as the utility of the law of cheques in addressing issues raised by technological change. Even as cheques and the cheque system are due to be superseded, the question therefore remains as to how long-established principles of the law relating to cheques may provide insight and guidance on legal issues that may arise with the use of replacement e-payment methods. A selection of such issues, namely, those relating to the rights and liabilities of parties in a cheque transaction, are discussed further in *Chapter 3*.

³³ *City Hardware Pte Ltd v Goh Boon Chye* [2005] 1 SLR(R) 754 at [16]-[17].

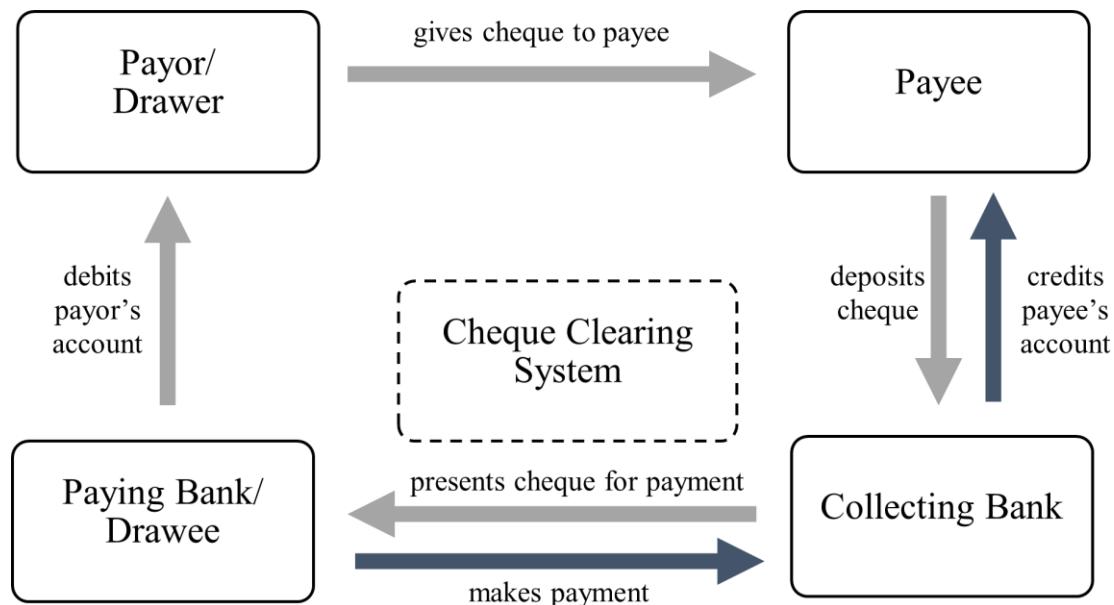
³⁴ See *Esso Petroleum Co. Ltd. v Milton* [1997] 1 WLR 939 at 952 and 954, but compare Simon Brown LJ's dissenting comments at 948.

CHAPTER 3

ANALYSIS OF THE LEGAL RIGHTS AND LIABILITIES OF PARTIES IN A CHEQUE TRANSACTION

3.1 This chapter examines the rights and liabilities of four key parties in a cheque transaction, namely: the payor, the payee, the paying bank, and the collecting bank. The “payor” (or “payer”) – also referred to as the “drawer” – is the party who draws the cheque, giving and signing the order to pay a sum of money. Correspondingly, the “payee” is the party to whom the money is payable. Additionally, a cheque transaction typically involves at least two banks. The first is the “drawee” or “paying bank”, the bank on which the cheque is drawn, and which pays (or dishonours) the cheque. The second is the “collecting bank”, which presents the cheque for payment through the clearing system and collects the proceeds.³⁵ The same bank may also act in dual capacities as both paying bank and collecting bank. The roles of these parties are summarised in the diagram below. As the rights of one party are often correlative with the duties or liabilities of another party, to avoid repetition, the sections of this chapter cross-refer to each other where relevant.

Diagram 1. Key parties in a cheque transaction



³⁵ Alternatively, if the cheque is not crossed, the payee may himself present the cheque for payment at the drawee bank. See BEA s 79.

3.2 For completeness, a cheque transaction may also involve additional parties, or entail existing parties performing additional roles. For instance, a cheque transaction may involve a bank acting as (i) a clearing bank, which acts as a collection agent for another bank; (ii) a processing bank, which receives the cheque with instructions that the proceeds be credited to the customer's account at another bank; and/or (iii) a discounting bank, which, having allowed its customer to draw or obtain an overdraft against the cheque proceeds, receives payment of the proceeds for itself.³⁶ Where a cheque is negotiable, it may also be transferred to an indorsee or acquired by a holder in due course.³⁷ However, this chapter does not discuss in detail the rights and liabilities of these parties, or the issues associated with their roles. This is because these issues do not typically arise in modern cheque transactions and/or are largely irrelevant to the e- payments context.³⁸

3.3 The extensive and comprehensive body of law relating to the rights and liabilities of parties in a cheque transaction has developed incrementally over the centuries. The purpose of this chapter is to provide a brief survey of the applicable law and highlight key issues, thereby uncovering legal issues that may need to be taken into consideration in the adoption and use of replacement payment solutions. However, this chapter specifically examines parties' rights in relation to post-dated cheques, given the intention to develop Electronic Deferred Payment ("EDP") solutions that are to be used in place of post-dated cheques and cashier's orders.

A. RIGHTS AND LIABILITIES OF THE PAYOR

(1) The Payor's Liability to the Payee

3.4 With respect to the payor's duties and liability to the payee, the payor (that is, the drawer) engages that: (a) on due presentment of the cheque, it will be accepted and paid according to its tenor; and (b) if the cheque is dishonoured, the payor will compensate the payee (that is, the holder) so long as the requisite proceedings on dishonour are duly taken.³⁹ These are the payor's key duties and liabilities in a cheque transaction. If a cheque is dishonoured, the measure of damages is provided for under section 57 of the BEA (and the payee's right of recourse in such a situation is discussed further in section 3.B below).

³⁶ For a discussion of issues associated with a bank acting as (i) the clearing bank, see *Halsbury's Laws of Singapore* vol 12 (LexisNexis, 2022 Reissue) at para 140.574; (ii) the processing bank, see Ellinger (n 5) at pp 708–711; and (iii) the discounting bank, see Ellinger (n 5) at pp 687–690.

³⁷ See BEA ss 29, 32; *Halsbury's* at para 140.428, n 1 and para 140.430.

³⁸ For example, issues associated with the bank acting as a discounting bank do not typically arise now that cheques are typically crossed "account payee".

³⁹ BEA s 55(1)(a). See also *Marina Sports v Alliance Richfield* [1990] 1 SLR(R) 385 at [7]; *Yeo Hiap Seng v Australian Food Corp Pte Ltd* [1991] 1 SLR(R) 336 at [30]; and *NEC Asia Pte Ltd v Picket & Rail Asia Pacific Pte Ltd* [2011] 2 SLR 565 at [71].

3.5 In an action against a payor in respect of a dishonoured cheque, the payor may raise certain defences, including: (i) fraud;⁴⁰ (ii) illegality;⁴¹ (iii) duress;⁴² (iv) that the cheque was not an unconditional order as required under section 3 of the BEA;⁴³ (v) that delivery was conditional, per section 21(3)(b) of the BEA, so that as long as the condition precedents were not fulfilled, the payee did not have title to the cheque nor the right to sue on it;⁴⁴ and (vi) that there was total or partial failure of consideration.⁴⁵

(2) The Payor's Right to Have the Cheque Paid

3.6 As between the payor and the paying bank, the payor is entitled to have his or her cheque paid by the paying bank in accordance with the terms stated in the cheque. If the cheque is wrongfully dishonoured, the payor's remedies include actions in breach of contract and defamation (as discussed further in *section 3.C.2* below). Additionally, if the cheque is wrongfully paid, the payor's remedies include an action in the tort of conversion (as discussed further in *section 3.C.3* below).

(3) The Payor's Duties to the Paying Bank

3.7 At the same time, the payor owes certain duties as a customer of the paying bank. First, the payor has a duty to refrain from drawing a payment order or instruction in a manner that would facilitate fraud or forgery (the *Macmillan* duty).⁴⁶ Second, the payor has a duty to inform the paying bank of any forgery or unauthorised drawing of a payment order or instruction as soon as the payor becomes aware of it (the *Greenwood* duty).⁴⁷

⁴⁰ See, e.g., *Millennium Commodity Trading v BS Tech* [2018] 3 SLR 98 at [58]; *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [32]; and *Marina Sports v Alliance Richfield* [1990] 1 SLR(R) 385.

⁴¹ See, e.g., *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [32]-[58] (on illegal moneylending and illegal litigation funding).

⁴² See, e.g., *Thomson Rubbers (India) Pte Ltd v Tan Ai Hock* [2012] 1 SLR 772 at [13]-[19].

⁴³ See, e.g., *Thomson Rubbers (India) Pte Ltd v Tan Ai Hock* [2012] 1 SLR 772 at [23]; and *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [67]-[68], [79]-[80].

⁴⁴ See, e.g., *Yeow Chern Lean v Neo Kok Eng* [2009] 3 SLR(R) 1131 at [40]-[43]; *Millennium Commodity Trading v BS Tech* [2018] 3 SLR 98 at [69]-[70], [76]; and *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [28]-[29].

⁴⁵ See, e.g., *Wong Fook Heng v Amixco Asia Pte Ltd* [1992] 1 SLR(R) 654; at [16]-[23]; *Thomson Rubbers (India) Pte Ltd v Tan Ai Hock* [2012] 1 SLR 772 at [20]-[21]; *Millennium Commodity Trading v BS Tech* [2018] 3 SLR 98 at [58], [99]-[111]; and *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [32].

⁴⁶ *London Joint Stock Bank, Limited v Macmillan and Arthur* [1918] AC 777, as applied in *Consmat Singapore (Pte) Ltd v Bank of America National Trust & Savings Association* [1992] 2 SLR(R) 195 and cited in *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR 273 at [51].

⁴⁷ *Greenwood (Pauper) v Martins Bank, Limited* [1933] AC 51, as applied in *Consmat Singapore (Pte) Ltd v Bank of America National Trust & Savings Association* [1992] 2 SLR(R) 195 and cited in *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR 273 at [51].

3.8 As regards the question of whether a customer's common law duties extend beyond these, the Singapore High Court has also held that there should be a term implied by law in the banker-customer contract that the customer owes a general duty not to facilitate fraud, even apart from the drawing of cheques.⁴⁸ This would include the manner in which the payor safe-keeps the cheque book. Such a duty may be relevant in the e-payments context. However, the Singapore Court of Appeal has subsequently expressed caution regarding the implication of such a term and the widening of a customer's duty.⁴⁹

3.9 Additionally, the paying bank may also impose additional duties on the payor by contract.⁵⁰ For example, a verification clause or a conclusive evidence clause may place the onus on the payor to verify bank statements and notify the paying bank of any discrepancy within a specified period, failing which the payor is precluded from claiming against the paying bank for loss.⁵¹

B. RIGHTS AND LIABILITIES OF THE PAYEE

3.10 As a corollary to the payor's liability to the payee (discussed at *section 3.A.1* above), the payee is entitled to have the cheque accepted and paid upon due presentment. If the cheque is dishonoured by non-payment, an immediate right of recourse against the payor accrues to the payee.⁵² In such circumstances, notice of dishonour must be given to the payor.⁵³

3.11 Separately, as between the payee and the paying bank, in the event that moneys are paid to the payee by mistake (for example, where a bank erroneously pays a cheque despite the payor's valid countermand), it is possible that the paying bank may seek restitution from the payee and/or the collecting bank.⁵⁴

C. RIGHTS AND LIABILITIES OF THE PAYING BANK

3.12 Despite the prospective elimination of the cheque system, paying and collecting cheques drawn by or paid in by customers is a defining aspect of banking business, and remains an important function of banks.⁵⁵ The duties and liabilities of the paying bank and the collecting bank in a cheque transaction hence are well-defined in the BEA and in case law.

⁴⁸ *Khoo Tian Hock v Oversea-Chinese Banking Corp Ltd* [2000] 3 SLR(R) 55.

⁴⁹ *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR 273 at [54].

⁵⁰ *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80 at 105-106; *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR 273 at [52]-[53], [55].

⁵¹ See *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR 273 at [55]-[66]; *Consmat Singapore (Pte) Ltd v Bank of America National Trust & Savings Association* [1992] 2 SLR(R) 195 at [7]; *Stephan Machinery Singapore Pte Ltd v Oversea-Chinese Banking Corp Ltd* [1999] 2 SLR(R) 518 at [3]; and *Tjoa Elis v United Overseas Bank* [2003] 1 SLR(R) 747; and *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246 at [84].

⁵² BEA s 47(2).

⁵³ BEA ss 48-49, 50(3); *City Hardware Pte Ltd v Goh Boon Chye* [2005] 1 SLR(R) 754 at [30].

⁵⁴ See, e.g., Ellinger (n 5) at ch 12.

⁵⁵ Banking Act 1970 (2020 Rev Ed) s 2(1).

(1) The Paying Bank's Duties

3.13 First, where a customer draws a cheque on a bank, the paying bank owes its customer a duty to pay the cheque.⁵⁶ In making payment on the cheque, the paying bank acts on the mandate given to it by the payor.⁵⁷ However, the paying bank may dishonour the cheque if it is not covered by adequate funds.⁵⁸ The paying bank's duty and authority to pay the cheque may also be revoked by counterman of payment or by notice of the customer's death.⁵⁹ Forgery or alteration of the cheque may also affect the paying bank's authority and mandate to pay. Statutorily, a forged or unauthorised signature on a cheque would make the cheque wholly inoperative.⁶⁰ Moreover, as a matter of common law, the paying bank has no mandate to pay on a forged cheque; if it makes payment, it is liable to the payor (unless the payor had failed to observe the *Macmillan* or *Greenwood* duties discussed at section 3.A.3 above).⁶¹ The paying bank's authority may also be terminated by other means, such as the customer's insolvency, a freezing injunction or statutory obligations under AML/CFT laws.

3.14 The paying bank also has a duty to exercise reasonable care in carrying out the payor's payment instructions. The court has formulated the *Quincecare* duty as requiring a banker to refrain from executing an order from a customer's agent, if the banker is "put on inquiry", having reasonable grounds to believe that the order is an attempt to misappropriate the company's funds by the company's agent.⁶² However, the courts have been reluctant to extend the *Quincecare* duty.⁶³ Short of clear evidence of fraud or an unusual and suspicious payment instruction,⁶⁴ the courts have generally also been reluctant to find that a paying bank breached its duty of care.⁶⁵

3.15 In view of these duties, the paying bank may be liable for wrongful dishonour or wrongful payment of a cheque (as discussed further below).

(2) The Paying Bank's Liability for Wrongful Dishonour

3.16 If the paying bank wrongfully dishonours a cheque, it is liable to the payor (whose remedies are discussed at section 3.A.2 above).

⁵⁶ *Burnett v Westminster Bank Ltd* [1966] 1 QB 742.

⁵⁷ *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246 at [74].

⁵⁸ See, e.g., *Sierra Leone Telecommunications Co. Ltd. v Barclays Bank plc* [1998] 2 All ER 821.

⁵⁹ BEA s 75.

⁶⁰ BEA s 24; *Jiang Ou v EFG Bank AG* [2011] 4 SLR 246 at [74]; *Cheng William (administrator of the estate of Cheng Louise, deceased) v DBS Bank Ltd* [2010] SGHC 34 at [98]-[102].

⁶¹ *Pertamina Energy Trading Limited v Credit Suisse* [2006] 4 SLR 273 at [51].

⁶² *Barclays Bank plc v Quincecare* [1992] 4 All ER 363 at 376-377; *Hsu Ann Mei Amy v Oversea-Chinese Banking Corp Ltd* [2011] 2 SLR 178 at [23]-[24]. See also *PT Asuransi Tugu Pratama Indonesia TBK v Citibank NA* [2023] HKCFA 3.

⁶³ See, e.g., *Philipp v Barclays Bank UK PLC* [2023] UKSC 25 (on the *Quincecare* duty in the context of authorised push payment fraud).

⁶⁴ *Lipkin Gorman v Karpnale & Co Ltd.* [1989] WLR 1340.

⁶⁵ Cranston (n 3) at pp 383-384.

3.17 In certain exceptional situations, the paying bank may also be liable to the collecting bank (for example, where the paying bank had previously marked the cheque with an express undertaking that it would honour the cheque when presented,⁶⁶ or where the paying bank did not honour and pay the cheque in a timely fashion, so that the collecting bank is liable to its own customer for failing to comply with clearing commitments⁶⁷).

(3) The Paying Bank's Liability for Wrongful Payment

3.18 Additionally, the paying bank may be liable to the payor for wrongful payment of a cheque. However, the common law and statute protect the paying bank in certain circumstances. Statutory protection is available in relation to (i) crossed cheques, cheques that do not appear to be crossed at the time of presentment, cheques that have had their crossings obliterated or cheques that have unauthorised additions or alterations – provided that the bank paid the cheque in good faith and without negligence;⁶⁸ as well as to (ii) cheques containing forged and irregular indorsement – provided that the bank acted in good faith and in the ordinary course of business.⁶⁹ Defences are also available to the paying bank at common law and in equity, such as where there is ratification of an agent's act by the principal, where the customer's carelessness gives rise to estoppel, where the customer's instructions were ambiguous and (arguably) the equitable principle of subrogation.⁷⁰

(4) The Paying Bank and the Payee

3.19 This section has so far focused on the relationship between the paying bank and the payor. Turning to consider the paying bank in relation to the payee, the paying bank ordinarily does not accept the cheque and is not a party to it.⁷¹ The paying bank therefore generally is not liable on the cheque to the payee.⁷² Rather, if a cheque is dishonoured, the payee's primary recourse is against the payor (as discussed at section 3.B above).

3.20 Exceptionally, however, the paying bank may incur liability to the payee. For example, the paying bank may be statutorily liable to the payee, if it pays a cheque in breach of a general or special crossing thereon.⁷³ It has also been argued that the paying bank may potentially be liable in specific circumstances, for instance, if it makes payment to a person other than the payee or voluntarily assumed responsibility to the payee.⁷⁴

⁶⁶ *Bank of Baroda Ltd. v Punjab National Bank Ltd.* [1944] AC 176 at 188.

⁶⁷ *Hare v Henty* (1861) CBNS 65; *Tayeb v HSBC Bank plc* [2004] 4 All ER 1024 at [57].

⁶⁸ BEA ss 79(3), 80.

⁶⁹ BEA s 83(1).

⁷⁰ Ellinger (n 5) at pp 495–510.

⁷¹ See *Bank of Baroda Ltd. v Punjab National Bank Ltd.* [1944] UKPC 13 at 4.

⁷² BEA s 53.

⁷³ BEA s 79(2).

⁷⁴ See further Cranston (n 3) at pp 385–386.

D. RIGHTS AND LIABILITIES OF THE COLLECTING BANK

3.21 Having considered the rights and liabilities of the paying bank, this section now addresses the collecting bank's rights and liabilities in a cheque transaction. The collecting bank acts as the payee's agent when collecting a cheque.⁷⁵ In collecting cheques for its customer's account, the bank must act with reasonable care.⁷⁶ The collecting bank hence will be liable if it fails to collect the cheque or collects the cheque for a person other than its customer.⁷⁷

3.22 Moreover, if the customer has no title or defective title to the cheque, the collecting bank may be liable to the cheque's true owner. The true owner may bring a claim in the tort of conversion, or a claim in restitution premised on a "waiver of the tort".⁷⁸ However, protection may be available to the collecting bank under statute and at common law. For example, under section 86 of the BEA, in such circumstances, the collecting bank does not incur any liability to the cheque's true owner, provided that the bank receives payment in good faith and without negligence.

3.23 As noted above, a bank may act in dual capacities as both paying bank and collecting bank, which can potentially raise specific and complex issues. Though these issues are not canvassed here, they have been considered in case law and in academic commentary.⁷⁹

E. PARTIES' RIGHTS AND OBLIGATIONS IN RELATION TO POST-DATED CHEQUES

3.24 In addition to the issues discussed above, given the intention to develop EDP solutions that are to be used in place of post-dated cheques, this chapter closes with a discussion of parties' rights and issues that arise specifically in relation to post-dated cheques. Post-dated cheques have long posed both commercial and legal difficulties, including in relation to their validity, regularity and negotiability.⁸⁰

⁷⁵ *Re Barn Crown Ltd.* [1995] 1 WLR 147 at 151 and 155-156.

⁷⁶ *A A Valibhoy and Sons (1907) Pte Ltd v Banque Nationale de Paris* [1994] 2 SLR(R) 14 at [41]-[42].

⁷⁷ Cranston (n 3) at p 386.

⁷⁸ *OBG Ltd v Allan* [2008] AC 1; *Yeow Chern Lean v Neo Kok Eng* [2009] 3 SLR(R) 1131 at [52].

⁷⁹ See, e.g., Ellinger (n 5) at pp 711-715.

⁸⁰ See, e.g., MS Breckenridge, "The Negotiability of Postdated Checks" (1929) 38 Yale L J 1063.

3.25 An initial issue is whether a post-dated cheque is a valid instrument before the date marked thereon. The prevailing view is that a post-dated cheque is a valid instrument. Notably, the BEA provides that a bill is not invalid by reason only that it is antedated or post-dated.⁸¹ Singapore case law also supports this view⁸² (together with case law in the UK,⁸³ New Zealand⁸⁴ and Canada⁸⁵). However, one objection is that a post-dated cheque is not truly “payable on demand” as the statutory definition requires, and therefore is not a cheque (nor even a bill of exchange) within the meaning of the BEA, but merely a written instruction to make payment on a specified date.⁸⁶ There is also English case authority that treats a post-dated cheque as equivalent to a bill of exchange (and not a cheque) between the day of delivering the cheque and the day marked on the cheque.⁸⁷ Another objection is that a post-dated cheque is invalid because it is not an unconditional order to pay, as the statutory definition in section 3 of the BEA requires. The court has accepted that a bill would be invalid if it embodied a conditional order to pay, but clarified that a bill is not invalid simply and only by reason that it is post-dated.⁸⁸

3.26 From the paying bank’s standpoint, a post-dated cheque only becomes payable upon the date marked on the cheque. In the event that the payor countermands the post-dated cheque during the period between the date of the cheque’s issue and the date stated on the cheque’s face, the paying bank should dishonour the cheque.⁸⁹ If the bank were to prematurely pay the cheque, it would technically be acting beyond its mandate, and generally would not be entitled to debit the payor’s account.⁹⁰

⁸¹ BEA s 13(2).

⁸² *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [59]; *Liang Tai Trading Co Ltd v Toh Thye Guan* [1968-1970] SLR(R) 773 at [10].

⁸³ *Hitchcock v Edwards* (1889) 60 LT 636; *Royal Bank of Scotland v Tottenham* [1894] 2 QB 715 (CA) at 719; *Robinson v Benkel* (1913) 29 TLR 475 at 476.

⁸⁴ *Pollock v Bank of New Zealand* [1902] 20 NZLR 174 at 180, 182-183; *Light v The Great Northern Tavern* (NZHC, 18 February 2003) at 12.

⁸⁵ *Keyes v Royal Bank of Canada* [1947] 3 DLR 161 (SCC); *Michaud v Caisse Populaire Notre-Dame de Lourdes* (2001) 245 NBR (2d) 63 (NBQB) at 12-13; *Markham School for Human Development v Ghods* (2002) 60 OR (3d) 624 (OSC) at 624.

⁸⁶ Byles (n 8) at para 21-007.

⁸⁷ *Forster v Mackreth* (1867) 16 LT 23 (considered in *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [61]).

⁸⁸ *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [79].

⁸⁹ *Keyes v Royal Bank of Canada* [1947] 3 DLR 161 (SCC).

⁹⁰ *Pollock v Bank of New Zealand* [1902] 20 NZLR 174 and *Hinchcliffe v Ballarat Banking Co* (1870) 1 VR (L) 229; cited in *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2018] 3 SLR 98 at [62] and [58] respectively.

3.27 Hence, from a conceptual perspective, there is inconsistent legal treatment as between the payor and the payee (where the cheque is regarded as valid from its actual date of issue), and as between the payor and the paying bank (where the cheque is regarded as unissued until the date marked thereon). Commentators have therefore suggested the introduction of statutory provisions to resolve such inconsistency. For example, this could take the form of a statutory provision to the effect that a cheque is deemed payable on demand irrespective of its purported date of issue;⁹¹ or a statutory provision stating that the fact that an instrument is post-dated should be disregarded for the purposes of determining whether an instrument is a cheque.⁹² While we have taken note of the legal issues in relation to post-dated cheques, we do not think such issues would arise in the replacement EDP solutions. In any event, care should be taken to ensure that such issues do not affect the replacement EDP solutions.

3.28 Over the centuries, an extensive body of law has developed in relation to the rights and liabilities of parties in a cheque transaction, as briefly surveyed in this *Chapter 3*. The legal implications of terminating the cheque system hence should be carefully considered in light of these established principles. Certain key implications are discussed further in *Chapter 4*.

⁹¹ Ellinger (n 5) at p 410.

⁹² Such a provision has been introduced in Australia. See Aus Cheques Act 1986 (Cth) s 16(3).

CHAPTER 4

ANALYSIS OF THE IMPLICATIONS THAT MAY ARISE IN THE EVENT CHEQUES ARE ABOLISHED IN SINGAPORE

4.1 This chapter examines the implications if cheques are phased out in Singapore. We begin with an examination of the EDP system that MAS is considering introducing to replicate certain features of the existing system (see *section 4.A*). We then consider whether the EDP system, as presently described by MAS, is lacking certain features of the existing cheque system which may be commercially beneficial (see *section 4.B*). We conclude by observing that careful consideration should be given to potential legislative reform to replicate the commercially beneficial features of the existing cheque system in the EDP system before the cheque system is completely abolished (see *section 4.C*).

A. THE EDP SYSTEM

4.2 Based on the MAS Consultation Paper dated 2 November 2022, we understand that EDP solutions are intended to be set up to gradually phase out the use of cheques in Singapore.⁹³ Under the proposed EDP solution / system, users may make deferred payments (“**Payment EDP**”), or issue cashier’s orders (“**Cashier’s Order EDP**”) electronically.

4.3 To make a Payment EDP, the payor will initiate an “**EDP Creation Request**” with their bank by indicating: (i) the payee’s name, bank code and account number; or the payee’s PayNow proxy, and (ii) a date on or after which the EDP Creation Request is initiated when the payee can receive payment (the “**Deferred Date**”). The payor’s bank will then send the EDP information to the payee’s bank. The payee’s bank will, in turn, notify the payee that a Payment EDP has been made.⁹⁴

4.4 To receive a Payment EDP, the payee will initiate an “**EDP Presentment Request**” with their bank on or after the Deferred Date. The payor’s bank will verify the EDP Presentment Request, debit the payor’s account and notify the payor. The payor’s bank will make payment to the payee’s bank. The payee’s bank will then credit the funds to the payee’s bank account and notify the payee.⁹⁵

4.5 A Payment EDP can be cancelled by either the payor or payee any time before the EDP Presentment Request is made. This bears some similarity to a cheque (post-dated or otherwise) where a payor may countermand a cheque before the cheque is presented for payment or between the date of the cheque’s issuance and the date stated on the face of the cheque.⁹⁶

4.6 The steps and proposed transaction flow in a Payment EDP are illustrated in the following diagram:⁹⁷

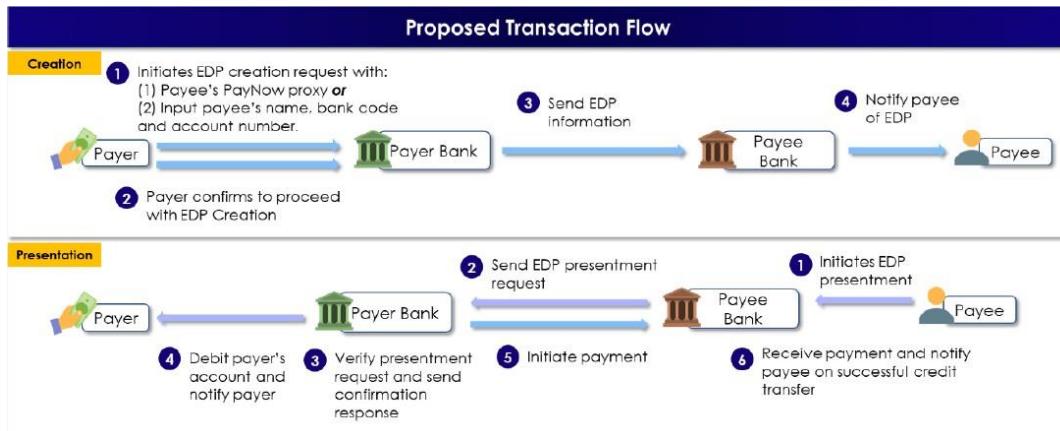
⁹³ MAS, “Consultation Paper on Roadmap to Terminate the SGD Cheque Truncation System” (n 1) at para 2.2.

⁹⁴ MAS, “Consultation Paper on Roadmap to Terminate the SGD Cheque Truncation System” (n 1) at para 4.12.

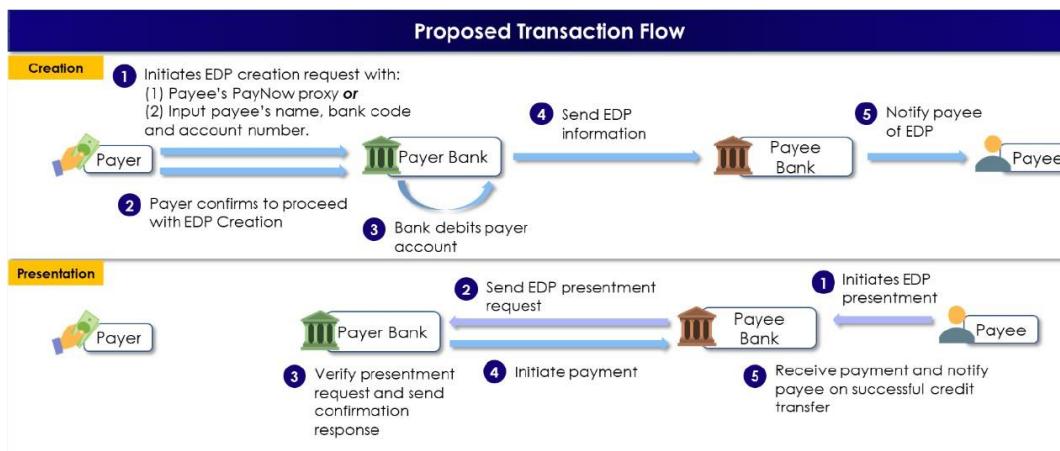
⁹⁵ MAS, “Consultation Paper Roadmap to Terminate the SGD Cheque Truncation System” (n 1) at para 4.12.

⁹⁶ See para 3.26 above.

⁹⁷ MAS, “Consultation Paper on Roadmap to Terminate the SGD Cheque Truncation System” (n 1) at para 4.12.



4.7 A Cashier's Order EDP is similar to a Payment EDP, save that the payor's bank will immediately debit the payor's bank account when an EDP Creation Request is made. This is similar to how a payor's bank debits a payor's bank account immediately when a cashier's order is purchased. The steps and proposed transaction flow in a Cashier's Order EDP are as follows:⁹⁸



4.8 In summary, the processes adopted in Payment EDPs and Cashier's Order EDPs are similar to how cheques and cashier's orders are issued and processed. The main difference is that the physical cheque / cashier's order is replaced by an electronic request that is created, and thereafter "presented" to the bank (as one would when cheques / cashiers' orders are issued to a payee). The four key parties in a cheque transaction, namely the payor, payee, paying bank and collecting bank, are replicated under the EDP system.

4.9 In the MAS Response to Feedback Received dated 28 July 2023, MAS has clarified that the EDP system is designed to have a “simple user flow” to allow participating banks to implement the EDP solution by 2025.⁹⁹ The EDP system is only intended to offer features that allow it to serve as a viable e-payment alternative to post-dated cheques and cashier’s orders. The EDP system will not cover other forms of cheque usage, such as bearer cheques and blank cheques, that will not be replicated under the EDP system. It is our understanding that such transactions would be phased out after the cheque system is abolished.¹⁰⁰ This is an important point to note when abolishing the cheque system. Perhaps the reason why such cheque transactions have not been taken into account when considering the replacement EDP solution is simply because standard cheque transactions can now be undertaken by way of electronic transaction payments. As for the other types of cheque transactions including bearer cheques and blank cheques, these are not commonly issued in any event.

4.10 In response to feedback on whether legislative amendments should be made to afford the payee of an unsuccessful Payment EDP a right of recourse where a Payment EDP has failed due to insufficient funds in the payer’s account, the MAS stated that a more comprehensive review of this issue is required to determine if there is a need for legislative amendments, as well as the potential consequences of legislative amendments.¹⁰¹

B. IMPLICATIONS IF CHEQUES ARE ABOLISHED IN SINGAPORE

(1) Loss of the Cash Equivalence Principle

4.11 As mentioned in the chapters above, it is well established that a cheque should generally be honoured.¹⁰² The legal nature and effect of a cheque is that it establishes a separate and distinct contract from the underlying contract in pursuance to which the bill was executed, and on which the payee may rest a claim.¹⁰³ In other words, a cheque is effectively treated as cash. It can be sued on to receive the amount stated in the cheque.

⁹⁹ MAS, “Response to Feedback Received” (n 2) at para 3.9.

¹⁰⁰ MAS, “Response to Feedback Received” (n 2) at para 3.8.

¹⁰¹ MAS, “Response to Feedback Received” (n 2) at para 3.20.

¹⁰² *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA* [2016] 5 SLR 455 at [29].

¹⁰³ *Wong Fook Heng v Amixco Asia Pte Ltd* [1992] 1 SLR(R) 654 at [13] (“It is the general rule that a bill of exchange evidences a contract separate and distinct from the original and underlying contract in pursuance of which the bill is executed. It does not depend for its enforcement on the performance of the original contract.”); *Quek Jin Oon v Goh Chin Soon* [2020] SGHC 246 at [24] (“It is well-settled that a bill of exchange constitutes a separate contract, and creates obligations for the drawer and rights for the drawee that are independent of any underlying transaction pursuant to which the bill is issued. Hence, the payee is entitled to frame its claim as resting on the bill alone”); *Millennium Commodity Trading Ltd v BS Tech Pte Ltd* [2017] SGHC 58 at [49] (“the cheque constitutes a separate contract and creates obligations for the drawer and rights for the payee that are autonomous from any underlying transaction”); *City Hardware Pte Ltd v Goh Boon Chye* [2005] 1 SLR(R) 754 at [18].

4.12 The cash equivalence principle is given effect to in sections 47 and 57 of the BEA. Section 47 provides that when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorser accrues to the holder; section 57 states that a holder may recover liquidated damages on the amount of the bill, interest from the time of presentment / maturity of the bill, and the expenses incurred to obtain recovery of the same.

4.13 While the EDP system will replicate the four key parties involved in a cheque transaction – *viz* the payor, payee, paying bank and collecting bank – there is no similar body of case law to clarify how the EDP payment would be construed. For example, would the EDP system give rise to a separate and distinct cause of action for the payee in the event of non-payment on or after the Deferred Date? If a Payment EDP is dishonoured on or after the Deferred Date, it would appear that there is no separate and distinct contract on which the payee can sue.

4.14 If a Payment EDP is effectively treated as cash, then the further question is whether other forms of electronic payments such as FAST and GIRO transactions should also be treated as cash. One argument is that there is little substantive difference between a Payment EDP, and other forms of electronic payments such as FAST and GIRO, as the EDP system will leverage on existing payment rails to effect payment.¹⁰⁴ If the cash equivalence principle is extended to a Payment EDP, it would arguably be difficult to justify why the cash equivalence principle should not also be extended to other forms of electronic payments although such a distinction may well be made on policy grounds since the Payment EDP is established to gradually phase out cheques.

(2) Loss of a Quick and Easy Enforcement Process

4.15 Abolishing cheques will deprive payees of a quick and easy enforcement process in the event of non-payment. As a cheque is separate and distinct from the underlying contract, a payee can simply frame a claim based on the cheque transaction alone to obtain judgment for the amount stated in the cheque. There would not be a need to separately establish and prove the circumstances of the underlying contract, or why the payee is entitled to receive the amount stated in the cheque.

4.16 If an action is brought on a cheque, the payee will generally be entitled to summary judgment unless the payor is able to raise a defence that impinges directly on the issuance and negotiation of the cheque, such as fraud, illegality, duress or failure of consideration.¹⁰⁵ A counterclaim based on a breach of the underlying contract is not sufficient to justify granting the payor leave to defend the claim. There is some legal support for the position that a breach of the underlying contract is extraneous to the cheque and would have to be pursued in a separate action.¹⁰⁶

¹⁰⁴ MAS, "Consultation Paper on Roadmap to Terminate SGD CTS" (n 1) at para 4.11.

¹⁰⁵ Poh Chu Chai, *Banking Law* (LexisNexis, 3rd Ed, 2018) at para 8.1.2; *Thomson Rubbers (India) Pte Ltd v Tan Ai Hock* [2012] 1 SLR 772 at [11]. Also see paras 2.11 and 3.5 above.

¹⁰⁶ Poh (n 105) at para 8.1.1.

4.17 As such, the benefit of using cheques as a mode of payment is that the cheque is itself the contract that can be sued on. Summary judgment is typically obtained for the amount stated on the cheque without the need to proceed for a full trial on the merits of the underlying transaction. Judgment can be obtained regardless of whether there is a breach of the underlying contract, which the payor will have to be put to the trouble and expense of proving in a separate action. In the meantime, the payee is likely to have obtained summary judgment for the amount stated in the cheque, and to have enforced / started enforcing the judgment against the payor's assets.

4.18 Seen from this perspective, there are significant commercial benefits to using cheques. They create certainty in the payment aspects of transactions. If cheques are replaced by an electronic payment system, it would appear that the Payment EDP or Cashier's Order EDP would not provide such benefits. The Payment EDP or Cashier's Order EDP cannot be relied on as a foundation for a quick and easy enforcement process.

(3) Uncertainty on Whether the Established Defences Apply

4.19 It is well established that a defence that impinges directly on the issuance or negotiation of the cheque itself, such as fraud, illegality or duress, constitutes a good defence to the action. This position is statutorily encapsulated in section 30 of the BEA, which provides that once the acceptance, issuance, or subsequent negotiation of a bill is affected with fraud, duress, or illegality, the burden of proof is shifted to the holder to prove that value has in good faith been given for the bill.

4.20 In the context of cheques, for instance, if it is proved that a cheque was issued fraudulently, this renders the cheque voidable as between the payor and payee. Fraud leads to a defect in title obtained by the payee over the cheque, and constitutes a good defence in an action brought on the cheque.¹⁰⁷

4.21 We have yet to surmise from the publicly available information on the Payment EDP/Cashier's Order EDP what possible defences could be raised to justify the withholding of payment under these systems on or after the Deferred Date. Will this even be an issue since any non-payment would merely result in parties enforcing their rights in the underlying contract? If so, there would be no need to consider the issue of what defences one may establish in the face of a non-payment of the Payment EDP/Cashier's Order EDP. We would add that in the case of a Cashier's Order EDP, the likelihood of non-payment should be practically non-existent since the payor's bank immediately debits the payor's account upon creation of the Cashier's Order EDP, and subsequently initiates payment upon presentment by the payee. The more practical concern is whether there is a need to replicate these defences in a Payment EDP, which would in turn only be necessary if a dishonoured Payment EDP gives rise to a basis to sue separately from a claim on the underlying contract. At this juncture, it is unclear whether such defences are necessary should cheque transactions be abolished and replaced by a Payment EDP system.

¹⁰⁷ Poh (n 105) at para 8.4.1.

4.22 In the context of a Payment EDP, if a Payment EDP is initiated fraudulently (e.g. if the payor's password was improperly accessed), the key issue that arises is how to avoid the payment from going through. There would, in such a case, clearly be no need for the payor to consider defences for non-payment given that the payment in question was never intended to be put through in the first place. The Payment EDP should have an appropriate mechanism to stop the transaction even after the EDP Presentment Request is made by the payee, and before the transaction is effected in such an event where the EDP Creation Request was made fraudulently. In the MAS Response to Feedback Received dated 28 July 2023 at [3.10], MAS acknowledged that a mechanism allowing payors and payees to cancel a Payment EDP or Cashier's Order EDP (among other things) would be essential to the viability of the EDP solution and would be made available in the EDP solution. The contours of this envisaged cancellation mechanism are not yet clear however. For instance, it is not clear if the Payment EDP can be cancelled only before but not after the EDP Presentation Request is made by the payee. Or should a Payment EDP be an irrevocable undertaking to pay regardless of the circumstances? If the Payment EDP can be "dishonoured" (to use cheque terminology), would the payor be able to allege that the Payment EDP was made fraudulently to avoid the transaction? Further, would the payor be able to sue the paying bank on the basis of the *Quincecare* duty, or would the protection afforded by this duty not extend to the Payment EDP situation (similar to the position in relation to authorised push payment fraud in the UK¹⁰⁸)? Moreover, would the regulations applicable to financial institutions, such as the MAS E-Payments User Protection Guidelines, apply to the EDP system to provide additional protection for payors and payees? These questions would have to be clarified by legislation or case law to promote certainty in the use of the EDP system.

C. CONCLUDING THOUGHTS

4.23 It would appear that the EDP system is yet another form of electronic payment that can be utilised to effect payment and is intended to cover post-dated cheques and cashier's orders. From our examination of the EDP system, we cannot surmise any feature of the cheque system, and therefore, none of the legal principles or legislation surrounding a cheque transaction can be applicable to the EDP system. This would risk losing the commercial benefits of cheques outlined earlier in this paper. It is the Committee's view that there should be a closer examination on whether some law reform should be undertaken to replicate the legal nature and effect of cheque transactions, bearing in mind the features and commercial benefits that will be lost once the cheque system is abolished. This would include the loss of the cash equivalence principle as well as the loss of a quick and easy enforcement process.

¹⁰⁸ See *Philipp v Barclays Bank UK PLC* [2023] UKSC 25.

4.24 The Committee is of the view that there is a need to consider this issue carefully because the features and commercial benefits of a cheque transaction are still potentially useful and relevant to business persons and the general public. From an examination of the case law as discussed in this paper, we have found that as recently as 2023, several legal authorities involved disputes relating to cheques.¹⁰⁹ There is also a body of case law that has clarified the legal principles surrounding cheque transactions which can still be relied on by parties. The Committee believes that some consideration should be given to how legislative reform may be made to keep alive the legal effect of cheque transactions so as to retain their features and commercial benefits. The challenge is whether one should propose legislative reform for the Payment EDP just to take into account the unique features of a cheque transaction when not all Payment EDP transactions would be used to replace a cheque transaction.

4.25 It is the Committee's view that a possible reform would be to state in legislation that when a Payment EDP request is created and sent to the payee bank, it would constitute an irrevocable undertaking by the payor to pay the payee on or after the Deferred Date regardless of the underlying transaction. This would arguably have the effect of the cash equivalence principle and would allow for a quick and easy enforcement process. In the event of a non-payment, the payee may rely on the EDP payment request to found a claim against the payor. Given that not all Payment EDP transactions would be used in replacement of a cheque transaction, the legislative reform could also permit parties to expressly "opt-out" of treating the request as an irrevocable undertaking by an agreement in writing so as to cater to situations where parties simply intend to use the Payment EDP system as a payment tool. The Committee is of the view that this proposal or other reforms should be carefully considered before the cheque system is abolished.

¹⁰⁹ See, e.g., *Voltas Ltd v Ng Theng Swee* [2023] SGHC 245; *Lim Bee Huat v Zheng Rong Trading and Distribution Pte Ltd* [2023] SGDC 105; *Lim Bee Huat v Goh Tiong Choon* [2023] SGDC 163.

