

An Analysis of the Domain and Proceedings Rules Governing the Article 23 of the Amended Statute of 4/11/2018 on Checks

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Abstract

Iranian legislator, in article 23 of amended code on checks of 2018, has allowed demanding the check amount through a writ of execution from the competent court.

The article is connected with various regulations not mentioned in the code, but only inferred from the legislator's prospective, i.e the writ of execution is a binding non-contradictional administrative writ (actes d'administration judiciaire) the competent court for issuance of which being the court competent to hear the main dispute rising from the check based on the Civil Procedure Code of 2000. But, if the dispute is of a criminal essence, the criminal court is competent for issuance of the writ.

Based on the code, the legislator has limited the holder's rights; The holder cannot claim late payment penalty and court expenses for the enforcement. In addition, the execution writ is issued against the drawer and the account owner not the guarantor and endorser. Moreover, though the writ cannot be issued for conditional and guaranteed checks as well as checks covered by article 14 of the code, non-issuance of the writ is not limited to these cases; the court can refrain from issuance in other instances too.

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As we know, issuance of an execution writ for a check, by the Documents and Lands Registration Office, is also permitted. However, in contrast, the privileges in article 23 are that the holder can invoke the Code on Enforcement of Financial Convictions of 2015 too, while not being bound to submit the original copy of the check to the Enforcement Department of the Office. Though the issuance of an execution writ by the Office is possible for conditional and guaranteed checks, it is prohibited by the legislator for such checks, based on article 23.

Keywords: Realm and Proceedings Rules; the Writ of Execution-Essence of Execution; Nullification Dispute; the Execution by Document and Land Registration Office and the Court.

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