

# A Case for Up-dating Banking Legislation and/or Practice Regarding Collection of Cheques

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*Mr. Suntheralingam, who has several years of practical experience as a manager in the People's Bank, expresses his personal suggestions here on measures to facilitate collection of cheques. It is emphasised that these opinions are not those of the People's Bank or in any way the official viewpoint. The two footnotes are not those of the author but are the views of authoritative persons who have discussed Mr. Suntheralingam's suggestions. They are included at the end of this paper with the hope that they would stimulate the discussion on this subject.*

Among the many services Banks are called upon to perform, one of the traditional services is collection of instruments for payment to customers' accounts, largely in the form of cheques. When customers of a Bank deposit cheques drawn on other Banks (or on itself too) this Bank serves as a collecting agent or if it had already given value for the cheques the Bank functions as a Collecting Banker.

The Bills of Exchange Act of 1882 in England and its parallel Act in our country gives protection to the paying bank under its provisions when the Bank acts in the bonafide capacity and pays the Collecting Banker. The relevant sections of both these Acts is quoted below:

"When the Banker on whom a Crossed cheque is drawn in good faith and without negligence pays it, if crossed generally, to a Banker and if crossed especially, to the Banker to whom it is crossed or his Agent for collection being a banker, the Banker paying the cheque and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same right and be placed in the same position as if payment of the cheque had been made to the true owner thereof".

This is the current legal position in our country.

Before we proceed further, let us analyse the customer content and the type of work and responsibility involved in the collection of cheques.

The Banking sector in our country is at present composed of the two state-owned Banks (Bank of Ceylon and People's Bank), branches of six Foreign Banks, one locally owned Commercial Bank and a Commercial Bank with mixed ownership.

The Banking sector caters to the following sections in our economy — the Government sector, the Co-operative sector, the Corporation sector and the private sector. The last one is composed of big business establishments, petty traders, craftsmen, etc, and individuals who have accounts which are termed personal accounts.

Though statistically it may not be possible to prove by direct reference, it is true to say that the Government sector, Government sponsored sector, Co-operative sector and big business (business managed by professionals) are the major customers of the Bank. The major part of the work is handled on their behalf.

When cheques drawn on other Banks are deposited by the customers, the Collecting Banks are expected to collect the proceeds as expeditiously as possible. Cheques are deposited by the customers either over the counter or by mail. Either way the cheques have to be received, acknowledged, and scrutinised. Here the scrutiny is not done as is done by the paying Banker. As for the Collecting banker, among other things, the major question that has to be resolved is that of conversation; i.e. legally defined as "wrongful interception of goods belonging to another" or alternatively as "an unauthorised act which deprives another of his property permanently or for an indefinite time". In layman's language, a cheque ostensibly meant for 'A' should not be credited to 'B' even if 'B' comes into possession and presents it however long-standing and honourable a customer 'B' may be. When the Banker

scrutinises, he sees to it that he does not collect a cheque purportedly meant for 'B' into 'A's account.

Once the officer is satisfied as to the existence of reasonable grounds to believe that there is no obvious attempt at conversion, he guarantees the fate of proceeds wherever relevant. Suppose the cheque is a direct credit, i.e. the cheque is drawn payable to 'A' and he is called upon to collect the proceeds to the credit of 'A's account, he assures the paying banker that the proceeds will be credited or if he intends crediting it before the fate is known or before the lapse of the number of days of waiting, then he assures in the form of a confirmation that the payee's account has been credited. In case of a negotiated cheque it is at the most on the assurance of the beneficiary customer, preferably on the guarantee of another disinterested customer, that the collecting Banker guarantees the fate and uses the obvious words to that effect. The signature is placed on the reverse of the cheque, in the appropriate places stamped, and the credit voucher or slip is also signed in the appropriate place.

These cheques, looking at it from the point of view of a Branch in Colombo, would consist of broadly speaking cheques drawn in Colombo branches and cheques drawn on outstation branches.

Cheques drawn on Colombo branches have to be cleared through the Central Clearing chaired by the Central Bank. This is done twice a day. All cheques received upto — say 10 a.m. or thereabout — will be sent to the Central Clearing around 11 a.m. on the same day and all others will be sent on the morning before 8 a.m. the succeeding day.

The Colombo cheques received upto 10 a.m. if they are to be expeditiously cleared, must be sent that day by 11 a.m. In order to do that the Bank has to receive, acknowledge, scrutinise, guarantee fate, sort them, list them, tally them, schedule them and be in time at the Central Clearing lest the Bank staff be "shut out". Outstation cheques have to go through the same process and be ready to catch the post by 2 p.m. the latest.

This rush exists because, though the Bank is legally entitled to keep the cheque for an additional day, it opts to clear it the same day to be of invaluable service to its customers. The major delay is caused

by the necessity for satisfying the conditions regarding guaranteeing the fate, assuming that the other contributory factors such as sufficient staff and machinery are available. Statistically speaking the number of cheques handled by the Banks in the process of collection of cheques is not readily available. A crude attempt has been made to arrive at the dimensions involved by taking a sample of the number of cheques handled over a period of five consecutive days by one of the Branches of the People's Bank situated in Colombo which may be regarded as one of the largest Branches. This, in no way will reflect the full effect of the amount of work involved but would at least give an indication of the number of signatures the officers are called upon to place, and if necessary sanction were granted, the amount of time that could be saved and thus enable the expeditious collection of cheques. (See Table).

Is there a necessity for the collecting Banker to guarantee the fate of cheques? The paying Bank's

The Authority on Commercial Banking (Sheldon) summarises the position as follows:

"The Cheques Act 1957 (and certain statutory instruments) do not mitigate the severity of this position (i.e. need for endorsement) but they do take the vast majority of cheques and indeed the vast majority of Banking instruments outside their purview. The paying Banker does not incur any liability by reason only of the absence of or irregularity in endorsement (Section 1, 2) and the collecting Banker is no longer negligent by reason only of his failure to concern himself with the absence of or irregularity in endorsement of an instrument".

The relevant section of the Cheques Act 1957 are quoted below:

**Paying Banker: Section 1 (1)**

When a Bank in good faith and in the ordinary course of business pays a cheque drawn on him which is not endorsed or is irregularly endorsed, he does not in doing so, incur any liability by reason only of the absence of or irregularity in endorsement and he is

ceptor) and payable to them only are accepted by them. Again these cheques are credited to their respective accounts and not negotiated or transferred to other accounts. The cheques deposited by the National Savings Bank and other similar institutions too fall within this category.

The major time consuming work or chore that could be avoided is in the process of guaranteeing fate; other items of work like scrutinising, of vouchers, tallying, listing etc. cannot be avoided.

What is required now is to dispense with the necessity for perusal of the reverse of the cheques when the proceeds have to be credited to the account of the ostensible payee. If this is permitted the officers can dispense with the practice of guaranteeing fate when collecting cheques meant for the payee to the credit of the payees. In case of planned conversion by the customer the collecting Bank has recourse to its customer provided he has acted bonafide and without negligence.

From the point of view of the customers too, they need not waste

**COLLECTION OF CHEQUES FOR FIVE DAYS**

COLOMBO CLEARING			OUTSTATION CLEARING		TOTAL COLLECTION	
Date (1)	No. of Cheques (2)	Amount (3)	No. of Cheques (4)	Amount (5)	No. of Cheques (6)	Amount (7)
					(2+4)	(3+5)
78.05.29	1,927	28,859,052.20	1,512	7,349,163.72	3,439	36,208,215.92
78.05.30	1,802	7,224,028.72	972	6,390,766.48	2,774	13,315,993.85
78.05.31	2,154	10,708,076.40	1,827	7,607,917.45	3,981	18,315,993.85
78.06.01	2,512	22,081,885.69	1,923	6,707,138.13	4,435	28,789,023.82
78.06.02	2,421	47,665,142.01	1,451	5,029,625.99	3,872	52,694,768.00
<b>Total</b>	<b>10,816</b>	<b>116,538,185.02</b>	<b>7,685</b>	<b>33,084,611.77</b>	<b>18,501</b>	<b>149,622,796.79</b>

responsibility ends when that Bank pays the collecting Bank. They need not and cannot keep track of the fate of the proceeds thereafter. That is the factual as well as the legal position. In such a situation why should there be a time consuming practice of guaranteeing the fate of proceeds.

The relevant Section 80 of the Bill of Exchange Act 1882 quoted above spells out the position clearly.

In the United Kingdom the Cheques Act 1957 sought to dispense with the necessity for endorsement but succeeded in achieving one thing, it dispensed with the necessity for calling for endorsement and of guaranteeing of fate when the cheque is credited to the payee's account.

deemed to have paid it in due course. Collecting Banker: Section (4) (3)

A Banker is not to be treated for the purpose of this section as having been negligent by reason only of his failure to concern himself with the absence of or irregularity in endorsement of an instrument.

Why should we emulate the English example? The reasons are not far to seek. First and foremost the bulk of the business of banking is done on account of the Government departments, Corporations, Co-operatives and big business. None of these organisations accept negotiated cheques in discharge of debts by whoever has dealings with them. In other words, cheques drawn in their favour; or their account only are made not negotiable. (The seemingly innocent long rope meant for the intrepid inter-

their time writing credit instructions on the reverse of every cheque that is received.

It may not be out of place to quote the relevant extracts from the Circular dated 23rd September, 1957 issued by the Committee of London Clearing Bankers —

"Broadly the effect of the Act (i.e. the Cheques Act 1957) is that on and after that date paying Banks need not concern themselves with the endorsement or absence of endorsement upon any cheques or analogous instrument and the same applies to collecting banks unless ostensibly there is or has been, negotiation of the cheque or instrument for which purpose endorsement is still required". The intention of the Act is to relieve customers from the task of endorsing instruments which