

CERTAIN OBSERVATIONS ON THE DISHONOURING OF CHEQUES BY THE BANKS

Banker customer relationship entails mutual contractual obligations and duties as well. When a customer draws a cheque on his account in the Bank he has to ensure that the cheque is "honourable" by the drawee bank.

As is known a cheque to be valid has to conform to certain norms and legal requirements which have become acceptable in the banking world.

To briefly enumerate, the cheque has to be drawn neither post dated nor to be ante-dated beyond the time span the would make it invalid. It should not be beyond 30 or 60 days after the date of drawing if indicated as valid for 30/60 days. It should not be ante-dated six months since a cheque is valid for six months and the Bank may use its discretion and return it if it is not presented for over three months. If post dated the cheque will not be honoured, and a polite request will be made to represent it on or after the date. On such occasions the Bank will use the normal remarks like 'post dated'; 'obsolete'; 'irregularly dated' especially if the dating is not regularly done.

For instance, a bank returned a cheque for failure on the part of the customer to write the date according to international practice viz. year, month and date; When the very cheque leaf provides for writing out the date month and lastly the year by printing the first two digits of the current century. (Such howlers should be avoided)

There are other material parts of the cheque like amount of the cheque. This has to be written in both words and figures and both should express the same amount. If not it would be returned with the remark "amount in words and

figures differ" Certain banks permit the writing of the amount in words giving the cents part in figures instead of words.

Payee can be 'cash', named person or institution, the last two being either for 'order' or 'bearer'. If bearer is cut off it is construed as intended for order, if cash or 'order' is drawn it behoves the drawer to call in person and draw cash. The question of endorsement comes in when the cheque is payable to a named person or his order and he wishes to transfer same.

Another material part of the cheque is the signature of the drawer. It has to agree with the specimen already lodged as part of the mandate. When it differs or is incomplete by failure to place the relevant stamp or seal, if furnished when submitting the mandate, could also lead to dishonour.

There are certain crossings which when used restrict the transferability to the extent of the directions contained in the crossing itself. For example, if crossed, that is drawing of two transverse lines it cannot be encashed by non-bankers. If crossed specially to a bank it cannot be collected by anybody other than the named institution or its agent for collection. If the "account payee only" direction is included it cannot be collected to a party other than purported payee. If "not negotiable" is added or stated alone, it is ensured that a person who has no title to it does not get the proceeds by mere possession of the instrument. In such cases the bank returns cheques with the appropriate remarks.

There are circumstances when the bearer cheques can be altered to order cheques, in such instances either direct credit or proper endor-

sement is expected to restore its bearer status. If direct credit is intended the collecting bank guarantees fate with the appropriate guarantee duly signed by its authorised officer. In case of irregularities collecting banks refuse to collect and return, and if under certain circumstances (especially when endorsements are not satisfactory or appropriate) the paying bank also returns the cheques dishonoured.

Complaints have been received from payee's that the banks have invalidated the bearer cheques and returned them calling for endorsements by merely cutting the word bearer. This is a sad reflection if there is connivance to use a technical reason, to return, a cheque drawn without funds.

These legitimate dishonours are done to safeguard the interest of the customer as well as that of the bank. The drawer is the customer and the bank is bound to safeguard the interest of its customer, sometimes in spite of himself.

His carelessness or inappropriate drawings, contrary to the mandate may place the bank in an embarrassing position of having to return a cheque which may impair his credit. In certain circumstances he may purposely draw the cheque in such a manner that the Bank will have to return it. Thus his intention is fulfilled indirectly, through the Bank.

Bank returning of cheques could be broadly categorised into two. One is for technical reasons. The reasons enumerated above fall under this category. The most important other category is that of returning for want of funds. It may be insufficiency or non-availability at the time of presentation.

It is interesting to note that in view of the confidentiality of the banker /customer relationship the Bank unless on request, custom,

compulsion of law or state requirement does not disclose and is precluded from disclosing the state of the account.

The remarks used when returning for want of funds is "Refer to Drawer". This remark is what it means and was intended to refer the cheque back to the drawer may be for want of funds or may be even for some other even technical reason which the bank does not wish to convey or reveal to the third party who is not a party to the subsisting contractual relationship. This confidential communication which is meant to refer the cheque back to the drawer has come to mean lack of funds. One reason for this is all others are obviously seen on the cheque and even when returned are expressly stated, therefore it is by a process of elimination, so to say that it has come to mean lack of funds. There are other remarks also to indicate lack of funds. "Funds drawn against not received", "Exceeds arrangements", "not arranged for", "effects not realised". These to a certain extent reveal the state of the account and a prudent banker avoids all these and uses the remarks "Refer to drawer". It is what it means and nothing more to all others as banking authorities contend. In practice transactions have attributed this meaning namely "Want of funds" when returned with the remarks, "Refer to Drawer".

This is an area where bankers have to exercise greater caution, namely safeguard the customers "credit worthiness" or his ability to meet bills or his reputation. If by other means the payee gets to know the deficiency he makes good the amount and represents his cheque to the bank which will have no alternative but to pay although the customers intention of avoiding payment in time questionable will not be realised, and he may stand exposed.

There will be occasions when the bank has to return a cheque for

both lack of funds and for technical reasons. Some banks adopt the easy course of stating the technical or proximate reason on the cheque or the attached slip and not the financial or the ultimate reason. Certain banks still consider cheques returned for want of funds as a serious disqualification and close the account once 3 or more cheques are returned within the first six months and more than five after six months and more than ten when there is a loan commitment.

Certain banks have ceased to consider this as a serious disqualification though they continue to recover the penalty at a flat rate, though the rate in the context referred to above is on a graduated scale ending up in closure of the account.

Though the accepted banking practice is to mention the remark on the instrument certain banks use an attached slip and no remark is made on the cheque itself. This is contrary to law and more customer oriented and does not facilitate the maintenance of high standards of financial discipline.

Non-use of other remarks, indicative of lack or insufficiency of funds has been observed, by prudent bankers by confining their remarks to the innocuous phrase "Refer to Drawer". This is sufficiently expressive without disclosing something which a bank is not expected to do. Though "Refer to Drawer" has come, in normal parlance, to indicate lack of funds it should be used more frequently as an all embracing remark to include wherever possible certain technical errors or extraneous constraints on payments.

This note is not intended to be an exhaustive analysis of dishonour of cheques in all its aspects but to draw attention to certain aspects of current interest.

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