

Paying and Collecting Banker

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OBJECTIVES

- To know the meaning of paying banker and how he pays
- To understand the payment in due course and conditions required for a payment in due course
- To learn about the duties and responsibilities of a paying banker
- To know about the protection given in law, to a paying banker and conditions to get the protection

Introduction

- **Paying banker refers to the banker who holds the cheques of the drawer and is obliged to make payment if the funds of the customer are sufficient to cover the amount of his cheque drawn.**

Who is a Paying Banker?

- Paying banker is a banker, who actually pays a cheque to his customer or to the order of his customer.
- The banker who is liable to pay the value of a cheque of a customer as per the contract, when the amount is due from him to the customer is called paying banker.

For Example

- Ramesh is a customer of SBI and has drawn a cheque for Rs 50000 in the name of Suresh in exchange for goods purchased by him, Suresh brings the cheque to his bank to clear the amount and encashes the cheque. The bank from where the encashes the cheque is the paying banker in this situation.
- In other words , the drawee banker is the paying banker who pays the cheque of his customer.

DUTIES AND RESPONSIBILITIES OF A

PAYING BANKER:-

- A banker has an obligation to honour cheques of its customer, drawn on him and presented for payment, subject to the condition that there are sufficient funds in the accounts and the cheque is in order.
- In other words, the paying banker is under an obligation to honour cheque subject to some conditions, being satisfied.

Conditions to be satisfied

- a. There must be sufficient funds in the customer's account on which cheque is drawn.
- b. The funds should be properly applicable to the payment of such cheque.
- c. Cheque should be properly drawn and should not be irregular (or) ambiguous
- d. Cheque should be presented during the banking hours of the bank
- e. Cheques should be presented for payment within the validity period
- Now, the validity period for a cheque is three months from the date of issue. So cheques should be presented within three months of their issue.

Payment Process:-

- When payment of a cheque is met, through another bank of collection, it will be easier for the paying banker, as the identity of the payee would already be fixed by the collecting banker.
- When payment a cheque is sorted across the counter i.e when a cash payment is requested, the banker should exercise due diligence and ensure that there are no grounds to believe, the cheque is not owned by the person presenting across the counter. The paying banker should act in good faith and without negligence
- Mostly bearer cheques are paid across the counter.
There is also a limit for receiving cash payment. If the cheque amount is more than the limit fixed by

Reserve Bank of India, then it can be paid only to the account of the payee. The payee then has to use the money only through his own withdrawals.

- In olden days, a person receiving a cheque for his settlements, used to deposit the same in his account
- The bank branch, maintain his account, books all the deposited cheques in his favour and sends to the original destination for payment i.e to the bank / branch on which the cheque was originally drawn. The sending of cheques were mainly made through post or courier for out

station cheques and to clearing in case of local cheques.

Statutory Protection for Paying Banker

- Protection in case of order cheques
- Protection in case of Bearer Cheques
- Protection in case of Crossed cheques
- Protection in case of obliterated cheques
- Protection in case of Draft

Protection in case of order cheques

- In case of an order cheque, Section -85(1) provides statutory protection to the paying banker as follows :
 - "Where a cheque payable to order purports (Intention) to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course“
 - . However, two conditions must be fulfilled to avail of such protection.
- (a) **Endorsement must be regular** : To avail of the statutory protection, the banker must confirm that the endorsement is regular.
- (b) **Payment must be made in Due Course** : The paying banker must make payment in due course. If not, the paying banker will be deprived of statutory protection.

Protection in case of Bearer Cheques

- This section implies that a cheque originally issued as a bearer cheque remains always bearer. In other words it retains its bearer character irrespective of whether it bears endorsement in full or in blank or whether any endorsement restricts further negotiation or not.
- So the banks are not required to verify the regularity of the endorsement on bearer cheque, even if the instrument bears endorsement in full.

Protection in case of Crossed cheques

- The significance of crossing of a cheque is that a crossed cheque cannot be encashed by the bearer but can only be collected from the drawee bank in the bank account. (Sec. 123 and 126 of the Negotiable Instruments Act)
Therefore, **Crossing of cheque provides protection and safeguard to the issuer of the cheque.**

Protection in case of obliterated cheques

- Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Protection in case of Draft

- Section 85 A of the NIA states that draft drawn by one branch of a bank on another payable to order where any draft, that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

Dishonor of Cheques

- A cheque is said to be honoured if the banks give the amount to the payee. While, if the bank refuses to pay the amount to the payee, the cheque is said to be dishonoured.
- In other words, dishonour of cheque is a condition in which the bank refuses to pay the amount of cheque to the payee.

Reasons for Dishonour of Cheque

or

Circumstances for Dishonour of Cheques

- Insufficiency of funds
 - When adequate funds are not available in the account of customers, then the cheque can be dishonoured.
- Notice of the customer's death
 - The banker should not make payments on cheque presented after the death of customer.

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- Notice of customer's insanity

- The banker should stop the payment on cheques drawn and received after the receipt of notice of the customer's insanity.
- Notice of customer's insolvency
 - A banker should refuse payment on the cheques soon after the customer is adjudicated as insolvent.

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- Receipt of Garnishee order

- Where order is received attaching the whole amount, the banker should stop payment on cheques received after the receipt of such an order. But if the order is for specific amount, cheque should be honoured if the remaining amount is sufficient to meet them.
- Trust accounts
 - If the banker feels suspicious that the trustee wants to use the amount of the cheque for his personal use, he must stop payment.

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- Suspicious about the title over the cheque

- When the banker believes that the person presenting the cheque is not entitled to receive the payment, he should refuse the payment. For example stolen cheque
- Presentation of stale cheque or post dated cheque
 - The banker may refuse the cheque when they are presented after three months of its issue or they are presented before the due date in case of stale cheque and post dated cheque respectively

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- Joint accounts
 - In case of a joint account, the banker can refuse to make payment on the cheque if all the joint account holders do not sign it.

- Material alterations
 - When there is material alteration in the cheque, the banker may refuse payment.
- Stale cheque
 - The banker may refuse the cheque when they are presented after three months of its issue

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- Drawer's signature
 - If the signature of the drawer on the cheque does not tally with the specimen signature, the banker may refuse to make payment.
- Difference between words and figures

- If there is difference between the amount written in words and figures, the banker may refuse to make payment.
- Proper forms of cheque
 - If the cheque is not in the proper form i.e in accordance with the Provisions of NIA. The banker should refuse the payment.

What is wrongful dishonor of cheque?

- It refers to a mistake on the part of the bank to honor a valid negotiable instrument like a cheque by mistake that has been presented to it

for payment. If all the essentials of a valid cheque are fulfilled and there is enough money in the account for its payment and it's still not honored within the time period specified in NIA it results in wrongful dishonor.

- Assessment of loss or damages:
 - The loss or damage suffered by the customer as a result of dishonoring his cheques by the banker can be assessed in the following ways;
- **(1) The monetary loss;** first is the monetary loss suffered by the customer for dishonoring cheque by the banker. It is the actual loss due to the dishonor of a cheque.
- **(2) The loss of credit or reputation:** Reputation or credit is a foundation of trading business. If the customer lost his credit or

reputation, it may result from a loss of a profitable contract or business.

- **Risks of unwarranted and unjustifiable disclosure:**
 - If a banker discloses information unjustifiable, he shall be liable to his customer and the third party as follows:
- **Liability to the customer:** the customer may be the banker for the damages suffered by him as a result of such disclosure. A substantial amount may be charged if the customer suffered material damage.
- **Liability to the third party:** the banker is, responsible to the third parties also to whom such information is given if the banker furnishes such information as the knowledge that it is false. Or such party relies on the information and suffers losses.

Collecting Banker

- A Collecting Banker undertakes to collect cheques, drafts, bills, pay orders, traveller's cheque, Letter of credit, dividend warrants, debenture interest etc, on behalf of the customer.

Role of a Collecting Banker

- 1. Collection of Cheques from his customers.
- 2. Segregating them into
 - (a) Local Cheques and

– (b) Outstation Cheques

- 3. If the cheque is dishonoured –
- the same will be informed to the customer and the cheque will be returned with a remark- R. D {refer to the drawer}.
- a) In case of Local Cheques:
 - The banker presents the cheque to the paying banker/drawee and if cheque is honoured, he credits the customer's account with the amount realised.
- b) In case of Outstation Cheques:
 - The banker will send the cheque for clearance to the concerned bank through post and if cheque is honoured, the account of the customer will be credited with the realised money

Statutory Protection To The Collecting Banker

- The Negotiable Instruments act of 1881, provides some protection to the collecting banker as he can't examine each and every cheque in detail presented for collection. Sections 131 and 131 A of the act deals with the protection given to the collecting banker.
- Section 131 gives protection to the collecting banker in respect of a cheque bearing a forged endorsement or in respect of a cheque to which the customer has no title or has a defective title. This section states that *“A banker*

who has in good faith and without negligence, received payment for a customer, of a cheque crossed {generally or specially}to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of a cheque by reason only of having received such payment”

Duties & Responsibilities of Collecting Bankers:

- Acting as agent: While collecting an instrument, whether for credit to customer's account or for himself, the Bankers works as agent of his customer. As an agent he has generally to take such steps & precautions to protect the interest of his customer as a man of ordinary prudence would take to safe-guard his own interest.
- Scrutinizing the instruments: Name of the holder, Branch name, date, amount in word and figure, any cutting without signature, material alteration of any to be checked carefully.
- Checking the endorsement: Bankers has to check the instrument whether it has been endorsed properly.
- Presenting the instrument in due time: It is the responsibility of the collecting bank to present the instrument in due time to the paying bank.
- Collecting the proceeds in the payee's account: It is the duty of collecting banks to collect and credit the proceed of the instruments to the proper/correct account.
- Notice of dishonor and returning the instruments: If any instrument is dishonored by the paying bank it should be informed to the customer on the business day following the receipt of

STATUTORY PROTECTION TO THE COLLECTING BANKER:-

- Sections 131 and 131 A of the act deals with the protection given to the collecting banker.
- 1. This protection is available only for a “Crossed Cheque”.
- 2. The protection can be claimed only if the cheque is crossed before it reaches the collecting banker. If the collecting banker receives open cheque and if he himself crosses it and sends for the payment - collecting banker cannot get the protection.

- 3. The Collecting banker can claim this protection, only when he has collected the cheque as an agent for his customer. If he is a holder for value – he can't get the protection.
- 4. This protection can be claimed only if the collecting banker has collected the cheque in good faith and without negligence. Section 131 A of the Negotiable Instruments act of 1881, protects the interests of the collecting banker against the collection of a 'bank draft' having forged endorsement or defective title.

“Holder” (Section 8)

- The “holder” of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

- The person is called holder of a negotiable instrument if he satisfies the following 2 conditions.
 - He must be entitled to the possession of the instrument in his own name.
 - He must be entitled to receive /recover the amount due on instrument from the parties liable under the instrument.

Example for a Holder

- Mr. X gave a salary cheque for his employee Mr Y on amount of rs 1.25.000
- Assume Y lost the cheque, Z found the cheque on road.

“Holder in due course”(Section 9)

- “Holder in due course” means any person who for consideration became the possessor of a

promissory note, bill of exchange or cheque if payable to bearer.



- He must be a holder.

- He must have become, for consideration. Such consideration must not be unlawful and need not be adequate.

- He must have obtained the instrument before its maturity.

- He must have obtained the instrument in good faith, i.e. without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Thank You