

Rights, Responsibilities and Liabilities of payee/drawer with respect to collection and clearing of payment instruments

Payee: The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid is called the "payee."

Drawer: The maker of a bill of exchange or cheque is called the "drawer;" the person thereby directed to pay is called the "drawee." "Drawee in case of need," When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".

PAYMENT IN DUE COURSE

"Payment in due course" means payment in accordance *with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. (Section-10)*

Rights of Customer:

- Customer offers deposit whereas banker accepts deposits.
- He can draw his money upto the credit balance or upto a limit if credit is allowed
- Receives a pass book or statement of account. He has right to corrections if wrong entries are there.
- He can sue the banker if his cheque is wrongfully dishonored.
- He can sue the banker if secrecy of his ACCOUNT is not maintained.

Duties of customer:

- Must present the cheque for payment and collection within the business hours
- Presented within a reasonable time after date of issue. (6-month)
- Should safe keep his cheque book. If he fails in this duty he is to be held responsible for any loss
- Write cheque carefully leaving no room for alteration.

Liability of drawee of cheque:

The drawer of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so

to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of prior parties to holder in due course:

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Special provisions relating to cheques:

Revocation of banker's authority. (1) Countermand of payment;(2) notice of the customer's death; (3) notice of adjudication of the customer as an insolvent.

Cheque crossed generally.

Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Cheque crossed "account payee".

(1) Where a cheque crossed generally bears across its face an addition of the word "account payee" between the two parallel transverse line constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed "account payee".

(2) Where a cheque is crossed "account payee"---

(a) it shall cease to be negotiable; and

(b) it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.

Cheque crossed specially.

Where a cheque bears across its face an addition of the name of a banker either, with or without the words "not negotiable, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue.

Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross specially.

Where a cheque is crossed generally or specially the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection he may cross it specially to himself.

Crossing a material part of a cheque.

A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorized by this Act, to add to or alter, the crossing.

Payment of cheque crossed generally.

Where a cheque is crossed generally, the banker on whom it is drawn shall to pay it otherwise than to a banker.

Payment of cheque crossed specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than: to the banker to whom it is crossed, or his agent for collection.

Payment of cheque crossed specially more than once.

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in the course of crossed cheque.

Where 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 specially, to the banker to whom it is crossed or his agent for collection, being a banker, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of crossed cheque out of due course.

Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than, to a banker or, to the banker to whom the cheque is or was crossed, or to its agent for collection, being a banker, as the case may be.

Cheque bearing "not negotiable".

A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

Subject to the provisions of this Act relating to cheque crossed "account payee", where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Stop Payment:

Customer desires to stop payment of a cheque, should furnish complete instructions fully identifying the (i) cheque number, (ii) date, (iii) payee's name and (iv) amount, should be sent in writing to the Bank.

Stop payment instructions received other than in writing will not be binding on the Bank. Upon receipt thereof the Customer will complete any further documentation required by the Bank.

The Bank reserves the right to refuse payment of any cheque drawn otherwise than in accordance with the terms of banks & regulations.

Cheque Return & Delivery:

Cheques or other negotiable instruments deposited by the Customer that have been dishonored may be returned by special post or messenger to the Customer at the last known address of the Customer with the Bank at the risk and expense of the Customer concerned, unless prior arrangement has been made otherwise for its collection.

The Customer shall indemnify the Bank in full as collecting Banker from any loss which may be incurred by reason of the Bank guaranteeing any endorsement or discharge on a cheque, bill, note, draft, dividend warrant or any other instruments presented by the Customer for collection.

The Bank may accept cheques, drafts and other instruments payable or endorsed to the Customer for collection entirely at the Customer's own risk. Un-cleared items, though credited, shall not be drawn against, and if the same is allowed to be drawn against, the Bank shall have the right to debit any Account if the proceeds of the instruments are not realized and recover from the Customer, the value of any instrument discounted, purchased or collected by Bank in the event that the proceeds are not received against the same at any time and/or even after the receipt of the proceeds and credit to the Account of the Customer, if the value is subsequently debited from the Account for any reason, including but not limited to fraud, error, illegality.

Standardization of Cheques:

As per SBP PSD Circular No. 01 of 2014, SBP has issued guidelines to uniform standard for cheque printing.

These guidelines prescribe standards relating to the layout of cheques. For minimum requirements in respect of security features and printing techniques,

- i) New cheque books is being printed as per the new standard.
- ii) Customer are requested to replace your old unused stock of cheque with new standardized cheque books.

Standardization of Instrument (Pay Order & Demand Draft):

As per SBP PSD Circular No. 04 of 2015, SBP has issued guidelines to facilitate the clearing process of Payment Orders (POs) and Demand Drafts (DDs) and to safeguard the interests of general public.

In order to facilitate customers, Bank has devised a centralized mechanism for the verification of genuineness of POs and DDs, customer can call @ UAN 111-124-365 24/7 helpdesks / call center or through branches to verify the genuineness of the instruments.

Branch can validate the genuineness of PO / DD if the holder of instrument approaches in person any branch offering online banking services.

Compensation Policy:

In case the Collecting Bank fails to credit the payee's account as per the timelines introduced in these SBP Clearing Operations Guidelines, due to any reasons (like payment instrument lost during transit or any error/discrepancy in payment instruments made by Clearing House or Bank during the processing of payment instruments), Except in case the Bank/Clearing House declares force Majeure. Bank shall pay the mark up @ **3% above the SBP policy rate** to payee for the period of delay subject to determination and notification of the error as per Section 36 of the PS&EFT Act, 2007.

Collecting Bank shall pay the compensation amount to payee's account without any claim from the payee within thirty-one days from the lodge of payment instrument by the payee.

In case the Collecting Bank is not responsible for the delay it can claim the compensation payment from Drawee or Clearing House whoever is responsible except in case the Drawee/Clearing House has declared force majeure.

Bank/Clearing House shall not be liable to compensate the payees in case the Bank/Clearing House declares force majeure. The Bank shall communicate the force majeure events to customers.