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LEGAL & REGULATORY UPDATES, ANALYSIS AND COMMENTARY

Limitation and Procedural Compliance in Cheque Dishonour Cases in Bangladesh

In the lifecycle of rapidly scaling commercial activities in Bangladesh, the reliance on cheques for financial settlements remains foundational. However, the alarming frequency of cheque dishonour or bouncing presents an acute challenge to businesses. The primary legal recourse lies in Section 138 of the Negotiable Instruments Act, 1881, which imposes strict criminal liability.

1. The Unforgiving Clock: Statutory Limitation Periods

Explanation: The law sets a rigid timeline for prosecuting a cheque dishonour case. The payee must present the cheque within six (6) months of its date. Upon dishonour, a legal notice must be served to the drawer within thirty (30) days of receiving the return memo. If unpaid, the complaint must be filed before the Magistrate within exactly thirty (30) days from the expiry of the drawer's thirty 30 days payment window.

Challenge: The most common pitfall for creditors is missing these deadlines. A delay of even a single day in sending the notice or filing the complaint renders the criminal action time-barred and fundamentally void.

Available legal recourse if the statutory limitation period for filing a dishonour case is missed: If the statutory deadlines to file a criminal complaint under Section 138 of the Negotiable Instruments Act are missed, the primary legal recourse is to pivot and file a civil "Money Suit" for debt recovery. Under the Code of Civil Procedure, 1908, and the Limitation Act, 1908, you have a broader window of three (3) years from the date the cheque was drawn or the debt became due to initiate this civil action. While the Negotiable Instruments Act does not restrict the number of times a cheque can be presented to the bank and dishonoured within its validity period, the issuance of the statutory legal notice is strictly a one-time prerogative. As affirmed by the High Court Division of the Supreme Court in *Ahsan Habib Chowdhury v. Multidrive Ltd.* [14 BLC (2009) 66], a complainant may present a cheque as many times as desired,

but repeated legal notices cannot be served to artificially extend or circumvent the 30 day limitation period. Beyond the specific confines of Section 138, an aggrieved party may also explore alternative criminal remedies by filing a complaint case under Sections 406 and 420 of the Penal Code, 1860. However, invoking these general penal provisions requires establishing an inherent fraudulent intent from the outset and is typically pursued as a supplementary or alternative route when other efficacious statutory remedies are either time-barred or procedurally unavailable.

2. Procedural hurdles in Cheque Dishonour cases

In Bangladesh, determining the correct jurisdiction and venue is critical when initiating a cheque dishonour case. The territorial jurisdiction generally lies where the payee's bank branch is located—specifically, the jurisdiction where the cheque was presented and subsequently dishonoured. The initial criminal complaint must be filed before the Court of the Chief Metropolitan Magistrate (CMM) in metropolitan areas, or the Chief Judicial Magistrate (CJM) in district areas. Once the Magistrate takes cognizance of the offence, issues the summons, and the accused appears (or is brought in via warrant) to secure bail, the case is formally transferred to the Court of a Joint Sessions Judge for the actual trial.

Regarding timelines, although the legislative intent behind the Negotiable Instruments Act was to facilitate speedy debt recovery, the practical reality is starkly different. Due to severe judicial backlogs, frequent adjournments, and systemic delays in executing arrest warrants against evasive debtors, resolving a Section 138 case typically takes anywhere from two to four years at the trial court stage alone. This timeframe can extend significantly further if the losing party decides to file an appeal before the High Court Division.

Best way forward to resolve the case:

To effectively overcome procedural hurdles in cheque dishonour cases, creditors must adopt a strictly proactive approach to litigation management. Initially, meticulous pre-filing due diligence is essential; strict adherence to all statutory timelines and requirements under the relevant laws must be ensured to prevent the case from being dismissed on technical grounds later. It is equally crucial to verify the accurate address of the accused beforehand to guarantee the successful, legally valid service of the mandatory statutory notice. Once the complaint is filed, if the defaulting party fails to appear before the Magistrate, the complainant must pursue the issuance and execution of arrest warrants to compel attendance and advance the proceedings to the trial stage. Furthermore, comprehensive preparation of all documentary evidence such as the original cheque, bank return memo, and postal A/D receipts is vital for timely and flawless presentation in court. By institutionalizing these diligent practices, one can significantly mitigate common systemic delays and secure a much smoother path to debt recovery.

3. Corporate Liability and the Fatal Flaw of Incomplete Prosecution

When a dishonoured cheque issues, Section 140 of the Negotiable Instruments Act, 1881, dictates that liability extends beyond the corporate veil, rendering every person in charge at the time of the offence guilty alongside the company. However, complainants often encounter a fatal challenge by prosecuting a Managing Director or signatory without formally impleading the "Company" itself as a principal accused party, effectively making the case non-maintainable. To navigate this, complainants must ensure naming the principal corporate entity as "Accused No. 1," followed by the relevant signatory directors. Additionally, if an agent is filing the case on behalf of a corporate payee, they must strictly adhere to Section 188 of the Contract Act, 1872, by annexing a valid Power of Attorney and/or Board Resolution to validate their legal authorization.

How can we assist?

Successfully navigating cheque dishonour requires uncompromising procedural compliance. Accord Chambers' Dispute Resolution Team provides comprehensive legal support, from drafting and executing effective trial management to defending against malicious claims. For any strategic assistance please feel free to reach us any time.

For any query, feel free to contact us: assistance@accordchambers.com.

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