

Sample FAQx on Dishonour of Cheque

(Cheque Bouncing)

Q1. What can I do when a cheque is dishonoured for the reason of insufficient funds. What legal action I can take to get the amount cleared?

A. On the dishonour of a cheque, one can file a suit for recovery of the cheque amount along with the cost & interest under order XXXVII of Code of Civil Procedure 1908 (which is a summary procedure and) can also file a **Criminal Complaint u/s 138 of Negotiable Instrument Act** for punishment to the signatory of the cheque for having committed an offence. However, before filing the said **complaint** a statutory notice is liable to be given to the other party.

Q2. I have got my cheque dishonoured few months back. It was issued by a Company. What can I do now?

A. On the **dishonour of cheque by the company** you can file a suit for recovery of the amount under Order XXXVII of CPC. As you have stated that cheques were dishonoured few months back and you have issued no notice to the company bringing to their knowledge the **dishonour of cheques** and the life of the cheque is still valid which is usually six months from the date of issue. You please present the cheque again and on receipt of the information about the **dishonour of the cheque** you immediately issue notice within 30 days from the receipt of the information of dishonour of cheque to the company. If the company does not pay the amount within 30 days from the receipt of the notice, you can file complaint under **Section 138 of the Negotiable Instrument Act**. The said complaint is to be filed within one month on the expiry of 30 days period of notice.

Q3. Our is the software distribution co. During course of our business we had supplied software worth Rs.3 lacs. But our client dishonoured the cheque. We have filed court case on him after that he paid us Rs. 1 lac and then he has run away. We do not have any idea about his where about. Court has issued proclaimed offender notice, but we do not now how to trace him. He has closed his account and bankers are not cooperating with information like his other address. Pleas advice?

A. Let the proceedings of declaration of proclaimed Offender be completed. The accused *will be declared Proclaimed Offender* and can be arrested at any time. At

this stage, you can not do anything else. However, simultaneously you can file Suit for Recovery with the last known address of the accused.

Q4. I have a cheque dishonoured. I have informed the person in writing, but no response, what should be done to register a case of cheating, and which place it should be filed? The place of the bank, where the cheque was dishonoured or the place where the cheque was handed?

A. When you have informed the person about the dishonour of the cheque, in case the information is given within 30 days from the dishonour of the cheque, you can file a Complaint under **Section 138 of Negotiable Instrument Act** within one month after the expiry of notice period of 30 days. The Complaint for cheating is not maintainable legally. However, in certain cases the police have been registering cases of cheating against the accused.

Q5. I have blank cheques given to me by a partnership firm. Since they owe me some money which I had given to them as a loan. Besides the cheques and the statement of accounts. I do not have anything else. Suppose one day, I suddenly get to know that they have closed the partnership firm and dissolved it, Can I deposit the cheques now and legally raise a claim on them and how?

A. You should fill the cheques and present for encashment. The **Partnership Firm as well as partners are personally liable** and even after dissolution also the firm and partners are liable. Once the cheques are dishonoured you have to file a suit for recovery of the said amount under the summary procedure provided in Order 37 of **Code of Civil Procedure, 1908**. You should also file a complaint under Section 138 of the Negotiable Instruments Act. For this you will have to first give a notice, within 30 days of the dishonouring of the cheques. Then if payment is not made within 30 days of receipt of notice a complaint has to be filed within 30 days thereafter.

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