

Cheque Return: s. 138 action- Quick Summary

- Available for cheque returned. Cheque includes Pay Order and ECS debit mandate
- Cheque should not be stale i.e. dated over 3 months from the date of its presentation
- Cheque should be in discharge of existing debt or liability
- Cheque should have returned for want of funds
- Cheque returned for “A/c Closed”, “Payment Stopped” and “Refer to Drawer” held as returned for want of funds
- Demand notice to be given within 30 days from receipt of information of dishonour
- Requisite is issuance of demand notice within such 30 days and not its receipt in 30 days by the drawer
- Advisable to give demand notice only once by a single mode
- Demand notice may cover more than one returned cheque
- Notice should demand the drawer to pay within 15 days from its date of receipt
- Maintainable against all Directors of a company on the company’s cheque return. In such case, averment that such Director was in charge of and responsible for the conduct of the company’s business is necessary
- Maintainable against all Partners of a partnership firm on the partnership firm’s cheque return
- Notice should essentially be addressed to the person who has drawn the cheque
- Better to send notice to all directors/ partners when the cheque returned is drawn by a company/ partnership firm
- Notice to directors/ partners should be sent at their residential address
- Advisable to gather the date (and evidence) of receipt of demand notice by drawer
- Cause of action arises on the 16th day when drawer doesn't pay within 15 days from receiving the demand notice
- Complaint can be filed within 30 days from 16th day from the date of receipt by drawer of the demand notice, if the drawer doesn't pay in the meanwhile
- If the last day of limitation for filing complaint is a holiday, it may be filed on the next working day
- Courts can take cognizance even beyond 30 days
- Cheque bounce complaint based on second notice is maintainable
- Civil action for recovery of debt (via Court/ DRT/ SARFESI/ Insolvency & Bankruptcy Code) may run simultaneously/ independent of s.138 complaint
- Maintainable against a Sick company & its Directors
- Maintainable against the signatories of cheque of a company against which insolvency petition is filed
- Not maintainable against legal heirs of drawer. Not maintainable against trustees
- Complaint can be filed at the place where the payee/ holder has account where the return is received
- Payee, Holder in Due Course or a PoA Holder can file the complaint
- Dishonour of a post-dated cheque given for repayment of loan installment described as “security” in the loan agreement is covered by s.138
- The cheque should have been drawn by the Borrower or the Guarantor or any person obligated to pay
- In case a cheque is drawn by a company, complaint should be filed against the company and its directors and the signatory of the cheque
- Offence u/s 138 is person specific and the CrPC concept of cognizance of offence not appropriate in s.138 case
- s.138 case could be closed by payment of dues under the cheque (amount, cost and interest)
- On an appeal, court may require the accused/ appellant to deposit up to 20% as interim compensation and further minimum 20% of the fine or compensation awarded by the trial Court
- Subsequent filling of unfilled signed cheque is not considered alteration.