

CHEQUE THIS OUT:

More and more businesses are experiencing the situation where payment is made by way of a cheque drawn on the account of an individual or entity that is not the original customer. The question is often asked what are the consequences of accepting and lodging a cheque for payment that is drawn on an account that is not your customer's account.

What happens is that an account is opened in the name of a sole trader or partnership and then over a period of time the debtor starts paying by cheque in the name of a limited liability company and these are subsequently cashed by the creditor in settlement of a debt on an ongoing basis. The creditor may be taking on a different credit risk to the one originally signed up.

By doing so over a period of time the creditor could be making a tacit acknowledgement that he was accepting that he was no longer dealing with the debtor account as originally opened but with the limited liability company with whom the cheque was drawn on with all the attendant dangers in the event of a payment default. However each cheque is a contract and can be used to ground a legal action for payment of the amount shown on the cheque. This is in addition to any other legal remedies in contract that are available to the creditor.

From a practical point of view to safeguard against such a situation the following steps would be deemed prudent:

- Somebody in the credit department should be tasked with the job of seeing all the cheques on a daily basis before they are posted to ensure that in every case they comply with the name of the debtor as it appears in the debtors ledger and against the original application form;
- Where there is a difference the debtor should immediately be informed in writing that acceptance of this cheque is done on the basis that responsibility for payment for all purchases of goods/services lies with the original account holder and not the company name appearing on the cheque---an acknowledgement receipt from a responsible senior executive is essential.
- If the situation is ongoing over a period of time the creditor should perform a risk analyses of the company writing the cheques as this may be the entity you will have to pursue in the event of a default in payment.
- Terms and Conditions could also include a statement that in the event of any change in the legal status of the debtor should be notified to the creditor immediately.

It is also important to remember that writing cheques with insufficient funds is a criminal offence under S4 Criminal Justice (Theft and Fraud Offences) Act 2001 in force since August 2002. If you are faced with this situation you should make a formal complaint to the Gardai. Defaulters face up to 10 years in prison if convicted on indictment. However these days it is better to check that the insufficient funds refers to the debtor and not the bank.

As the dependence on cheques in Ireland as a portion of the total number of transactions is one of the highest in Europe in that 25% of all transactions are done by cheque in Ireland, compared to less than 1% for many European countries. The alternative is the greater use of electronic forms of payment (e-Payments), including direct debits, debit cards and credit cards. As a matter of interest there is a movement within the banks/government to withdraw the use of cheques within the next couple of years.

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