Indian Banks' Association

No. Legal/
June 23, 2015

Chief Executives of all Member Banks

Dear Sirs/Madam,

Sub.: The Negotiable Instruments (Amendment) Ordinance, 2015

In exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the Negotiable Instruments (Amendment) Ordinance, 2015 which shall come into force at once and has been published in the Gazette of India on June 15, 2015. An Ordinance further to amend the Negotiable Instruments Act, 1881 w.r.t section 6, section 142, insertion of section 142A.

Background:

Various financial institutions and industry associations have expressed difficulties, arising out of the recent legal interpretation of the place of jurisdiction for filing cases u/s 138 to be the place of drawers’ bank by the Supreme Court. To address the difficulties faced by the payee in filing the cases u/s 138 of the NI Act, the jurisdiction for offence u/s 138 has been proposed to be clearly defined. Accordingly, the Negotiable Instruments (Amendment) Ordinance, 2015 has been brought into force.

The amendments are focused on (1) ‘a cheque in the electronic form’ and (2) clarifying jurisdiction related issues for filing and transfer of pending cases of offence under Sec. 138 of the Negotiable Instruments Act, 1881.

Briefly the Ordinance provides for as under:

(1) In the Negotiable Instruments Act, 1881, in section 6, -

(i) In Explanation 1, for clause (a), the following clause shall be substituted, namely:-
   (a) “a cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

(ii) After Explanation II, the following Explanation shall be inserted, namely:-

‘Explanation III – For the purposes of this section, the expressions “asymmetric crypto system”, “computer resource”, “digital signature”, “electronic form” and “electronic signature” shall have the same meanings respectively assigned to them in the Information Technology Act, 2000’.
(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) If the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) If the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.
Explanation. – For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

(3) It further provides that all pending cases shall be transferred to the Court having jurisdiction accordingly.

A copy of the Gazette Notification dated June 15, 2015 is enclosed.

Yours faithfully,

[Signature]

Shrikant
Senior Executive – Legal

Encl.