

## THE AMENDMENT TO THE NEGOTIABLE INSTRUMENTS ACT, 1881 UNDER SECTION 138 OF THE ACT

The Negotiable Instruments (Amendment) Bill, 2017 was introduced in Lok Sabha on January 2, 2018. It seeks to amend the Negotiable Instruments Act, 1881. The Negotiable Instrument Act, 1881, defines promissory notes, bills of exchange, and cheques. It also specifies penalties for bouncing of cheques, and other violations with respect to such negotiable instruments. It focused on clarifying the jurisdiction related issues for filing cases for offence committed under Section 138 of the Act.

The amendment will provide clarity on jurisdictional issues relating to cases concerning Cheque bouncing, due to which many cases are pending before the Courts. The amendment is meant to increase the credibility of cheques as a financial instrument. This would further be in the interest of the complainants while ensuring fair trial.

### Features under Amendment

**Interim compensation:** The Bill inserts a provision allowing a court trying an offence related to Cheque bouncing, to direct the drawer (person who writes the Cheque) to pay interim compensation to the complainant. This interim compensation may be paid under certain circumstances, including where the drawer pleads not guilty of the accusation. The interim compensation will not exceed 20% of the Cheque amount, and will have to be paid by the drawer within 60 days of the trial court's order to pay such compensation.

**Deposit in case of appeal:** The Bill inserts a provision specifying that if a drawer convicted in a Cheque bouncing case files an appeal, the appellate court may direct him to deposit a minimum of 20% of the fine or compensation awarded by the trial court during conviction. This amount will be in addition to any interim compensation paid by the drawer during the earlier trial proceedings.

**Returning the interim compensation:** In case the drawer is acquitted (during trial or by the appellate court), the court will direct the complainant to return the interim compensation (or deposit in case of an appeal case), along with an interest. This amount will be repaid within 60 days of the court's order.

The Amendment is also meant to boost trade and commerce in general and allow the lending institution, including banks, to continue to extend financing of the economy, without the apprehension of loan default on account of bouncing of a Cheque.

NOTES: <http://www.livelaw.in/highlights-negotiable-instruments-amendment-bill-2017-read-bill>

## CONCLUSION

"Insolvency resolution is a commercial process and hence banks and financial institutions should be allowed to take informed decision taking their best business interest in mind. While the Amendment Act broadens the ineligibility criteria and removes some of the unintended consequences of the Ordinance, it also provides some useful exemptions in terms of which an ineligible person can bid after clearing the overdue. Whether this is a realistic exemption and would be availed by the promoters is to be seen.

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