



BANK OF ZAMBIA

OFFICE OF THE DEPUTY GOVERNOR - OPERATIONS

January 11, 2008

CB Circular: No. 01/2008

To: All Commercial Banks

MEASURES ON UNPAID CHEQUES

Background

According to clause 33 (1) of the **National Payment Systems Act No. 1 of 2007**, "Any person who willfully, dishonestly or with intent to defraud issues a cheque on an insufficiently funded account or causes to be issued a cheque to be drawn on that account and which cheque when it is presented for payment is dishonored, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both".

The Bank of Zambia, in its role of managing, administering, operating, supervising and regulating payment, clearing and settlement systems in Zambia, as conferred by the National Payment Systems Act No. 1 of 2007, has revised the measures on unpaid cheques with immediate effect.

Measures

All commercial banks are required to have the following:

1. Customer Acceptance Policies, Practices and Control Procedures

Every bank providing chequing accounts must have a clear customer acceptance policy as part of its customer due diligence and risk management strategy that is commensurate to its size and complexity of operations. This policy must be well understood by all members of staff charged with the responsibility of screening potential and existing customers. At a minimum this strategy shall include:

- a) A systematic procedure for identifying new customers and recommending appropriate products and/or services offered by the bank to each customer or category of customers;

- b) Adequate Management Information Systems to provide managers, auditors, and compliance officers with timely information needed to identify, analyse and effectively monitor the performance of customers' chequing accounts; and
- c) Adequate measures to receive, keep and make reference to all advice from other banks on badly maintained accounts, accounts whose cheque facility has been withdrawn and/or closed accounts. For corporate customers, particular attention should be given to the owners and the authorised signatories (controllers).

2. Prudential Chequing Account Relationship Management

Banks shall request their customers to comply with their customer acceptance policy on chequing accounts at the account opening stage. In the event that a customer is unable to comply with the customer acceptance policy on chequing accounts, the bank should offer such a customer alternative and appropriate products and services, which do not require a cheque book. Further, every bank shall comply with the following:

a) Personal Customers

Where a personal customer issues three cheques in a year that are subsequently returned unpaid (marked "Refer to Drawer") on account of insufficiently funded account, the bank shall request, in writing, such a customer to surrender their cheque book(s). No further cheque book(s) shall be issued to such a customer.

Where a customer fails to surrender the cheque book(s) within 30 days of such a written request, the bank shall close the chequing account of the concerned customers' account and advise the customer accordingly. The bank may offer such a customer alternative and appropriate products and services, which do not require a cheque book. All banks shall be advised of the closure of the account.

b) Corporate customers

Where a corporate customer issues cheques that are subsequently returned unpaid (marked "Refer to Drawer") on account of insufficiently funded account for three instances in a year, i.e. on three business days, the bank shall request, in writing, such a customer to surrender their cheque book(s). No further cheque book(s) shall be issued to such a customer.

Where a corporate customer fails to surrender the cheque book(s) within 30 days of such a written request, the bank shall close such an account and advise the customer accordingly. The bank may offer such a customer alternative and appropriate products and services, which do not require a cheque book. All banks shall be advised of the action.

c) Borrowing Customers (Personal or Corporate)

Where a customer having sanctioned overdraft facilities, issues cheques that are subsequently returned unpaid (marked "Refer to Drawer") on account of insufficiently funded account as in 2(a) and 2(b) above, the bank shall request, in writing, such a customer to surrender their cheque book(s). Where such a customer fails to surrender the cheque book(s) the bank shall institute measures to manage such an account.

Where such a customer fails to surrender the cheque book (s) within 90 days of such a written request, the bank shall close such an account and advise the customer accordingly. The 90 day grace period prior to closing accounts for borrowing customers is to allow sufficient time for banks to recover overdrawn amounts, if any. The bank shall offer such a customer alternative and appropriate products and services, which do not require a cheque book. All banks must be advised of the action.

In all circumstances, banks shall take extra time and care to scrutinise their customers in line with their Know Your Customer policies and procedures to ensure an effective and efficient communication mechanism at all times.

3. Termination of Standard minimum charge for all cheques returned unpaid on account of insufficiently funded accounts

It is hereby notified for the avoidance of doubt that the provisions of clause 8 of circular 5/2003 in terms whereof a charge of K300,000 was required to be imposed on a customer's account by way of penalty for an unpaid cheque, shall cease to apply effective immediately.

The measures to be effected in the event of a cheque being unpaid are those as per provisions of clause 2(a), 2(b) and 2(c) above.

4. Notice to customers

Every bank shall clearly and in plain language communicate these measures to all customers.

5. Cheques issued with intent to defraud

Section 33 (1) of the National Payment Systems Act of 2007 criminalises the act of wilfully issuing or causing to be issued a cheque(s) on an insufficiently funded account.

- a) Banks shall bring to the attention of their customers the implication of drawing a cheque on an insufficiently funded account. Customers shall be advised that when a cheque is dishonored on account of insufficient funds and it is determined that it was issued dishonestly or with intent to defraud, the issuer would have committed a criminal offence under this Act and if convicted shall be liable to imprisonment or a predetermined fine or both.
 - b) The determination of an offence shall be handled by the courts of law.
 - c) Banks shall bring to the attention of their corporate customers that where a cheque is dishonored on account of insufficient funds and it is determined that it was issued dishonestly or with intent to defraud by a corporation, every director or senior officer involved in the management of that corporation shall, on conviction, be liable as if such director or officer had personally committed the offence, unless the director or person proves to the satisfaction of the court that the act constituting the offence under section 33 of the NPS Act, was done without the knowledge, consent or connivance of that director or that the director or officer took sufficient steps to prevent the commission of the offence.
 - d) Banks shall henceforth and prior to September 30, 2008 ensure that the following message is printed on the cover of all cheque books issued to customers: *“issuers be aware: it is an offence to issue cheques on insufficiently funded accounts under the National Payment System Act No. 1 of 2007.”*
- 6. Reporting of dishonoured cheques suspected to have been issued with intent to defraud**
- a) The payee shall report in writing to the Zambia Police Service, Frauds Section, and the collecting bank immediately a cheque is dishonored, arising from:
 - (i) suspected dishonesty; and
 - (ii) suspected intention to defraud.
 - b) Upon receiving such a report, the collecting bank shall advise the paying bank of such a reported matter.
 - c) The paying bank in turn shall advise the Bank of Zambia of such a reported matter on a quarterly basis.

The report to the Bank of Zambia, which is for the Bank's oversight purposes only, shall be made in the prescribed format attached as **Appendix III**.

- d) Banks shall advise customers to report to their respective branches instances where they suspect that a dishonored cheque was issued dishonestly or with intent to defraud.

7. Submission of Returns

- a) Each bank shall submit monthly returns on unpaid cheques as outlined in **Appendices I and II** until 31st March 2008. With effect from 1st April 2008, each bank shall be required to submit these returns on a quarterly basis. The returns shall be submitted to the Bank of Zambia within ten (10) working days following the reference quarter in the prescribed format attached as **Appendices I and II**.
- b) Effective January 1, 2008, each bank shall additionally be required to submit to the Bank of Zambia on a quarterly basis, returns on dishonored cheques suspected to have willfully been issued with intent to defraud. The returns shall be submitted to the Bank of Zambia within ten (10) working days following the reference quarter in the prescribed format attached as **Appendix III**.

8. Maintenance of Records

- a) Every bank shall maintain records on unpaid cheques as set out in **Appendices I, II, and III** herewith attached according to the provisions of Section 28 (1) of the National Payment Systems Act, 2007.
- b) These records shall be subject to routine Bank of Zambia inspections and payment systems oversight. The records shall provide a basis for ascertaining the effectiveness of that particular bank's customer acceptance policy, as well as compliance to Payment Systems policies, practices and procedures.

9. Submission of False Documentation/Information

Any bank that submits false documentation and /or information shall be committing an offence as outlined under Section 31 of the National Payment Systems Act, 2007.

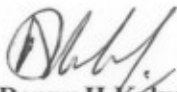
10. Penalties for non-compliance to directives

Any bank that fails to comply with these Directives shall incur a penalty of K3,000,000 per instance of non-compliance. In addition, a penalty of K100,000 per return will be incurred for each day that the return is delayed or an incorrect return remains outstanding.

Notwithstanding the above, the Bank of Zambia shall prescribe additional disciplinary measures as provided for under Section 43 (1) of the National Payment Systems Act, 2007.

11. Effective Date

This Circular supersedes CB Circular No. 05/2003 dated April 29, 2003 and takes effect immediately.



Denny H Kalyalya (Dr)
DEPUTY GOVERNOR - OPERATIONS

APPENDIX I – SCHEDULE OF GOVERNMENT ACCOUNTS CHEQUES RETURNED UNPAID

NAME OF PAYING BANK: _____

FOR THE PERIOD: _____

Serial No.	Date	Drawer				Payee			Times This Year	Account Status (i.e. open or closed)
		Name	Account No.	Cheque No.	Amount	Name	Bank	Branch		
1										
2										
3										
4										
5										
...										
...										
TOTAL										

Authorised Signatory: _____

Authorised Signatory: _____

Date: _____

Date: _____

APPENDIX II – SCHEDULE OF NON-GOVERNMENT CHEQUES RETURNED UNPAID

NAME OF PAYING BANK: _____

FOR THE PERIOD: _____

Serial No.	Date	Drawer				Payee			Times This Year	Account Status (i.e. open or closed)
		Name	Account No.	Cheque No.	Amount	Name	Bank	Branch		
1										
2										
3										
4										
5										
...										
...										
TOTAL										

Authorised Signatory: _____

Authorised Signatory: _____

Date: _____

Date: _____

APPENDIX III - SCHEDULE OF CHEQUES RETURNED UNPAID DUE TO BEING SUSPECTED TO HAVE BEEN ISSUED DISHONESTLY OR WITH INTEND TO DEFRAUD

NAME OF PAYING BANK: _____

REPORTING PERIOD: _____

Date: _____

The following dishonored cheques were reported as having been issued dishonestly and with intent to defraud:

Serial No.	Date	Drawer				Payee		
		Name	Account No.	Cheque No.	Amount	Name	Bank	Branch
1								
2								
3								
4								
5								
...								
...								

Authorised Signatory: _____

Date: _____