

DISHONOURED CHEQUES (OFFENCES) BILL, 2023

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**A
BILL
FOR**

AN ACT TO REPEAL AND RE-ENACT THE DISHONoured CHEQUES (OFFENCES) ACT 1977, TO MAKE IT AN OFFENCE ANYWHERE IN NIGERIA TO INDUCE THE DELIVERY OF PROPERTY OR SERVICE OR TO PURPORT TO SETTLE A LAWFUL OBLIGATION BY MEANS OF CHEQUE WHICH WHEN PRESENTED WITHIN A REASONABLE TIME IS DISHONoured ON THE GROUNDS OF NO FUNDS OR INSUFFICIENT FUNDS WERE STANDING TO THE CREDIT OF THE DRAWER OF THE CHEQUE OR ON OTHER GROUNDS PROVIDED IN THIS ACT, AND FOR RELATED MATTERS, 2024 (SB. 10).

Sponsored by Senator Sunday Steve Karimi

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ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1. Repeal of Dishonoured Cheques Act 1977

The Dishonoured Cheques (Offences) Act 1977, Cap. D11, Laws of Federation of Nigeria 2004 is hereby repealed.

2. Offences in relation to dishonoured cheques etc

-(1) A Person who knowingly-

- (a) Obtains or induces the delivery of anything capable of being stolen either to himself or to any other person; or
- (b) Obtains credit or service for himself or any other person, by means of a cheque which when presented for payment within six months of the date of the cheque, is dishonoured because:
 - (i) No funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn;
 - (ii) The account is dormant or non-existent;
 - (iii) The value of the cheque exceeds the amount authorized or agreed by the drawer with the drawee;
 - (iv) The drawer countermands or stops payment of a cheque without prior notice of such stoppage to the payee;
 - (v) The mandate is irregular;
 - (vi) The drawer has done any other deliberate act or omission to obstruct the payment of the value of the cheque shall be guilty of an offence in this Act.

(2) Any person who commits an offence subsection 1 of this section is liable on conviction:

- (a) in the case of an individual to be sentenced to imprisonment for two years or fine of N500,000.00 or to both such imprisonment and fine.;
- (b) in the case of a body corporate with an annual turnover of N 20,000,000.00 to a fine of N1,000,000.00 and for a Company other than a small Company, to a fine of N5,000,000.00.

(3) For the purposes of subsection (1) of this section-

- (a) reference to anything capable of being stolen shall be deemed to include a reference to money and every other description of property, things in action and other tangible property;
- (b) a person who draws a cheque which is dishonoured on the ground stated in the subsection and which was issued in settlement or purported settlement of any obligation under an enforceable contract entered into between the drawer of the cheque and the person to whom it is issued, shall be deemed to have obtained credit or service for himself by means of the cheque, notwithstanding

that at the time when the contact was entered into, the manner in which the obligation would be settled was not specified.

(4) A person shall not be guilty of an offence under this section if he proves to the satisfaction of the Court that when he issued the cheque he had reasonable grounds of believing, and did believe in the fact, that it would be honoured if presented for payment within the specified period under subsection 1 of this section.

3. Order of restitution

-(1) In addition to the penalties referred to in Section 1 (2) of this Bill, the Court may if it deems fit-

(a) Order the payment of the cheque value to the payee; or

(b) Order the restitution of any property which may have been obtained by the dishonoured cheque and has been recovered from the defendant or another, or which is in the defendant's possession or control; or

(c) Order the restitution of the value of any property or service which may have been obtained by the dishonoured cheque.

(2) Where the Court makes an order under subsection (1) of this section, payment may be made-

(a) to any person having an interest in the property or to the person who provided the service; and

(b) to the extent that-

(i) the property is not fully restored; or

(ii) full compensation has not been provided for the service.

4. Offences by Body Corporate

Where any offence under this Bill by a body Corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer, servant or agent of the body corporate (or an officer of the body corporate acting in any such capacity), he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and punished in the same manner as an individual.

5. Jurisdiction for trial of offences

The Federal High Court, the High Court of the Federal Capital Territory and the High Court of the state or Magistrate Court of a state where the offences stated under this Bill is committed, shall have jurisdiction to try and adjudicate over offences stated in this Bill and the proceedings shall be conducted in the procedure applicable for trial of criminal offences in such Court under which the offence is charged.

6. Powers of the Attorney General

Nothing in this Bill shall preclude the Attorney General of the Federation from exercising his powers under Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) even when the offences under this Bill is committed in any of the States of the Federation, provided that the Attorney General of the State can prosecute and conduct criminal proceedings under this Bill in respect of offences committed within the State subject to the exercise of prosecution powers by the Attorney General of the Federation.

7. Service of Notice of Dishonour

-(1) Where a Cheque is dishonoured on the grounds as provided in Section 1 of this Bill, a Notice shall be issued and duly served by the Drawee on the Drawer of the cheque stating the reason for the dishonour of the cheque and requiring the drawer to redeem the value of the cheque within

seven (7) days from the receipt of such notice and a certified copy of the notice shall be issued to the person who presented the cheque, within four (4) days commencing from the date of the dishonour.

(2) A drawee who fails to comply with the provisions of subsection (1) of this section is guilty of an offence punishable with a fine of Five Hundred Thousand Naira (N500,000.00) only

8. Interpretation

In this Act, unless the context otherwise provides-

"Bank" means a bank or other financial institution licensed by the Central Bank of Nigeria to conduct Banking business in tandem with Bank and other Financial Institutions Act 2020;

"Cheque" means a written order to a bank to pay a certain sum of money from an individual or corporate person's account to himself//itself or to another person. It is a Negotiable instrument and a payment instrument;

"Cheque Value" refers to the monetary value unambiguously written or expressed on the face of the cheque;

"Clear days" means public works commencing from Monday to Friday but excluding Saturdays and Sundays and any other day declared by the Government to be a public holiday;

"Dishonoured Cheque" means a cheque that is not honoured by the bank or financial institution on grounds/circumstances listed in the Bill;

"Drawee" means any institution conducting the business of receiving deposits of money from the public on current or deposit account, which may be withdrawn on demand, by cheque and the granting of credit facilities and generally the undertaking of any business pertaining to business of commercial banking;

"Drawer" means the person whose name appears on a cheque, whether the signature be that of himself or of a person acting in his behalf;

"Funds" means money or credit;

"Payee" means a person to whom a cheque or money therein is payable;

"Service" means any kind of lawful service obtainable upon payment of funds;

"Small Company" means a Company so categorized under the Company and Allied Matters Act.

9. Citation

This Bill may be cited as the Dishonoured Cheques (Offences) Bill, 2023.

EXPLANATORY MEMORANDUM

This Bill seeks to repeal and re-enact the Dishonoured Cheques (Offences) Bill 2023 to make it an offence for any person anywhere in Nigeria to induce the delivery of any property or service or to purport to settle a lawful obligation by means of a cheque which when presented within a reasonable time is dishonoured on the grounds that no funds or insufficient funds is standing in the credit of the drawer of the cheque or on other grounds as provided for this Bill.