

PRESS RELEASE

The Chairman of the Law Reform Commission, the Hon The Attorney General, John Griffiths Q.C., today announced publication of the Commission Report on Commercial Law – Bills of Exchange.

Mr Griffiths said:

“The Commission discovered that there is a potential problem in Hong Kong. Many businessmen sign cheques on behalf of their companies believing that only the company, and not they themselves personally, are liable on the cheque. But if the company fails to meet the cheque because it is out of funds, then unless the proper words are written on the cheque by the businessman, he in fact becomes personally liable. The Commission discovered there are some 4 million cheques a year in Hong Kong where the signer might become liable if the company failed to pay.”

When summarising the report, Mr Griffiths said that the Commission had been asked to consider two questions on the Bills of Exchange Ordinance. For all practical purposes, bills of exchange are cheques.

The questions were, should the provisions of the Bills of Exchange Ordinance be amended in relation to –

- (a) the time within which notice must be given where a cheque is dishonoured; and
- (b) the liability of persons who sign cheques for others, e.g. employees or directors of companies who sign company cheques.

The Commission was assisted by widespread investigations and consultation over a period of six months carried out by a working party led by the Hon F.K. Hu.

On the first matter, the Commission found that whatever view was taken as to the sufficiency of the time within which notice was to be given, there was provision to excuse a failure to meet the time limits in question where dishonour arose from insufficient funds or countermand of payment, and that accordingly no amendment was necessary.

On the second matter, that of the liability of persons who sign cheques for companies, the Commission found that the law in point had a confused history. Most people who sign such cheques believe that they are not personally liable where their companies fail to meet the cheques.

Nevertheless, on one view of the law, employees and directors who sign cheques on behalf of companies would be personally liable on cheques which the companies did not meet if they failed to record the words “for” or “on behalf of “. The number of company cheques involved in Hong Kong where these vital words are not used could be as many as 4,000,000 a year.

On another view of the law, where a person’s signature appears on a company cheque but only as a composite part of the company’s signature, that person is not liable. But merely to describe the singer as “Director”, etc., is not enough to protect the individual.

Mr Griffiths said:

“Having studied these matters in both their legal and practical implications, the Commission, to solve the potential problem for businessmen, has recommended:

- (1) that a matter of prudent banking practice, bankers should consider the desirability of advising companies who are their clients that, as the law stands at the moment, it is only the use of the words “for” or “on behalf of” or “for and on behalf of” and their company’s name that will assuredly avoid personal liability under the Bills of Exchange Ordinance of signatories on a dishonoured company cheque;*
- (2) that the Bills of Exchange Ordinance should be amended to make it clear that where a person’s signature appears on a cheque only as a composite part of his company’s signature, that person should not be personally liable; and*
- (3) that no amendment need be made in respect of the time within which notice must be given that a cheque has been dishonoured.*

The Commission also recommended that bankers should consider the desirability of inviting the attention of their corporate clients to provisions of section 93 of the Companies Ordinance. The effect of these provisions is that failure to set out the company’s name fully or accurately, or if in Chinese characters without the Chinese characters (有限公司), could result in personal liability on the cheque for the signatory.

In concluding his remarks about the 40 page report, Mr Griffiths paid tribute to the practical and constructive help given to the Law Reform Commission by the Hong Kong Association of Banks.