

## THIRD PARTY CHEQUES

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As an ANZ customer, you may have faced the issue of accepting a “Third Party Cheque”. There are risks involved both for yourself and ANZ, if you choose to accept a third party cheque for deposit to your account without the proper verification.

This brochure defines the term “third party cheque” and other relevant terms you should understand. It also explains the risks involved in depositing third party cheques to your account and the procedures that ANZ has introduced to reduce these risks

## What is a Third Party Cheque?

A “Third Party Cheque” is a cheque payable to one party which is to be deposited to the account of another party. For example, a cheque is made payable to “ABC Pty Ltd”. “ABC Pty Ltd” transfers ownership of the cheque to “New Town Engineering” for goods of equivalent value. “New Town Engineering” deposits the cheque into its own business account. Thus, a cheque payable to ABC Pty Ltd has been deposited to the account of a third party, “New Town Engineering”, and the cheque becomes a third party cheque.

Further, in order to safeguard you ‘the customer’ against cheques being deposited into incorrect accounts and in the case of stolen cheques, someone else’s account, ANZ will regard a cheque as a Third Party Cheque where the name on the cheque is different to that of the account and therefore we cannot clearly identify who the true owner is. For example: Cheque payable to R Smith or Rob Smith where the account is in the name of Robert John Smith. In this instance, the cheque may be the property of Robin Smith and attempts need to be made to determine the true owner. Therefore, ANZ will treat the cheque as a Third Party Cheque.

## Difficulties with Third Party Cheques

While it can be legal to transfer cheque ownership to a third party, it does give rise to some difficulties.

In the above example, where “New Town Engineering” deposited the cheque payable to “ABC Pty Ltd”, it is very difficult for the bank to know whether “New Town Engineering” was entitled to the cheque funds. The business that wrote the cheque (the drawer) instructed its bank to pay the funds to “ABC Pty Ltd”. It is possible that “ABC Pty Ltd” did give the cheque to “New Town Engineering” in exchange for something equal to the value of the cheque – but it is also possible that “New Town Engineering” is not the “true owner” of the cheque.

The “true owner” of the cheque is the party who is legitimately entitled to the value of the cheque. A customer who deposits the cheque may not be the true owner of the cheque if:

- the cheque does not show that customer as payee
- the cheque has not been adequately transferred to or endorsed to the customer
- the cheque has been stolen.

Where “New Town Engineering” is the true owner, it is entitled to deposit the third party cheque to its business account. If it is not the true owner but deposits the cheque to its account anyway, both “New Town Engineering” and the bank which accepts the deposit could be sued by the true owner of the cheque funds, for “conversion” of the cheque proceeds. “Conversion” occurs when the true owner of the cheque does not receive the value of the cheque. It is often difficult to recognise the true owner of a third party cheque. For this reason, third party cheque transactions generate a higher than normal incidence of claims for conversion, presenting higher risks both for the depositors and the bank.

## Protection Against Conversion

When ANZ customers deposit third party cheques into their account, ANZ must make enquiries to establish who is the true owner of the cheque. Where ownership has transferred, there needs to be a clear written record of the transfer. The following steps have been introduced by ANZ to protect the true owner of third party cheques.

### **Step One: Request a replacement cheque**

To best protect your interests, it is recommended and strongly encouraged that you obtain a replacement cheque payable to you or your business. Such a course makes it easier and much safer for both you and ANZ.

### **Step Two: Request a Letter of Authority**

If there is a problem acquiring a replacement cheque, ANZ requires that any third party cheque be accompanied by proof of ownership in the form of a "Letter of Authority".

A "Letter of Authority" is a written instruction to ANZ from the payee of the cheque, approving the deposit of the cheque into your bank account. Please note that the example shown at the end of this brochure includes the address and telephone number of the payee – these details will assist if ANZ needs to contact the payee to verify the payment instructions.

You should also be aware that the payee's "endorsement" (a statement saying "please pay... etc" signed by the payee) on a third party cheque will not automatically protect you from the risks already mentioned, as there is no way of verifying the authenticity of the signature endorsing the cheque. This contrasts with the Letter of Authority from the payee, which includes details such as telephone numbers and addresses, enabling the Bank to contact the payee and verify instructions.

### **Step Three: Provide business documentation to ANZ**

In addition to requesting a Letter of Authority, a senior ANZ staff member may require you to:

- produce a copy of the Certificate of Registration of Business Name if any cheque is payable to a trading name of which ANZ has no record, and/or
- produce a current licence, registration or practising certificate from an approved professional body which regulates trust accounts, if depositing cheques to a Statutory Trust Account.

## **ANZ Can Help**

If you suspect that you may be the victim of third party cheque fraud or need to confirm that one of your cheques has been properly negotiated, please do not hesitate to ask your ANZ Manager for assistance.

## **Third Party Cheque Example**

In the following example the drawer of the cheque is "J & H Enterprises"; the payee is "ABC Pty Ltd"; and the depositor of the third party cheque is "New Town Engineering". The letter of authority provided by "ABC Pty Ltd" is a written record that the ownership of the cheque has been transferred to "New Town Engineering".

## Cheque (Example)

		<i>Date: 16/2/20XX</i>
Pay:	ABC Pty Ltd	
Sum:	Thirty eight thousand, nine hundred and eighty-seven dollars and sixty-three cents only	
		\$38,987.63***
J & H Enterprises		
00345    98676    8504867		

## Letter of Authority (Example)

19th February 20XX

ABC Pty Ltd  
1/13 New Street  
New Town 3000

The Manager  
ANZ Branch XXX

Dear Mr Smith

We authorise that cheque number 00345, drawn by J & H Enterprises, dated 16/2/20XX for \$38,987.63, payable to ABC Pty Ltd, be deposited to the account of New Town Engineering.

Please feel free to contact me on (03) 9309 384X, at any time should you wish to discuss the matter further.

Yours faithfully

Brian Franklin                      Colin Hew  
Director ABC Pty Ltd              Secretary ABC Pty Ltd

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