

**BILLS OF EXCHANGE ACT**  
Cap 393 – 18 November 1914

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**BILLS OF EXCHANGE ACT**

**PRELIMINARY**

**1. Short title**

This Act may be cited as the Bills of Exchange Act.

**2. Interpretation**

In this Act—

“acceptance” means an acceptance completed by delivery or notification;

“action” includes counterclaim and set-off;

“banker” includes a body of persons, whether incorporated or not, who carry on the business of banking;

“bankrupt” includes any person whose estate is vested in a trustee or assignee under any enactment relating to bankruptcy;

“bearer” means the person in possession of a bill or note which is payable to bearer;

“bill” means bill of exchange;

“delivery” means transfer of possession, actual or constructive, from one person to another;

“holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer;

“indorsement” means an indorsement completed by delivery;

“issue” means the first delivery of a bill, note or cheque, complete in form, to a person who takes it as a holder;

“note” means promissory note;

“value” means valuable consideration.

## **PART I – BILLS OF EXCHANGE**

### **3. Bills of exchange**

(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, dated and signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay coupled with—

(a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount; or

(b) a statement of the transaction which gives rise to the bill,  
is unconditional.

(4) A bill is not invalid if it does not specify—

(a) the value given, or that any value has been given for it;

(b) the place where it is drawn or the place where it is payable.

### **4. Where different parties are same person**

(1) A bill may be drawn payable to, or to the order of, the drawer, or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill or as a note.

## **5. Address to drawee**

(1) The drawee shall be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to 2 or more drawees whether they are partners or not, but an order addressed to 2 drawees in the alternative or to 2 or more drawees in succession is not a bill.

## **6. Certainty required as to payee**

(1) Where a bill is not payable to bearer, the payee shall be named or otherwise indicated in it with reasonable certainty.

(2) (a) A bill may be made payable to 2 or more payees jointly, or it may be made payable in the alternative to one or 2, or one or some of several payees.

(b) A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

## **7. What bills are negotiable**

(1) Where a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties to it, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer where it is expressed to be so payable, or where the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order where it is expressed to be so payable, or where it is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

## **8. Sum payable**

(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(a) with interest;

(b) by stated instalments;

(c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;

- (d) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and where the bill is undated from its issue.

#### **9. Bill payable on demand**

(1) A bill is payable on demand—

- (a) where it is expressed to be payable on demand, or at sight, or on presentation; or
- (b) where no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who indorses it, be deemed a bill payable on demand.

#### **10. Bill payable at a future time**

(1) A bill is payable at a determinable future time within the meaning of this Act where it is expressed to be payable—

- (a) at a fixed period after date or sight;
- (b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

#### **11. Omission of date in bill payable after date**

(1) Where a bill expressed to be payable at a fixed period after the date it is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert in it the true date of issue or acceptance, and the bill shall be payable accordingly.

(2) Where a wrong date is inserted in a bill and the bill comes into the hands of a holder in due course, the bill shall not be avoided, but shall operate and be payable as if the date so inserted was the true date.

#### **12. Antedating and post-dating**

(1) Where a bill or an acceptance or an indorsement on a bill is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is antedated or post-dated, or that it bears date on a Sunday.

### **13. Time of payment**

(1) Where a bill is not payable on demand, the day on which it falls due is determined as follows—

- (a) where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;
- (b) where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of protest if the bill is protested for non-acceptance, or for non-delivery.

(2) Where the last day for the time of payment as specified in the bill is a non-business day, the bill shall, for the purposes of subsection (1), be payable on the next business day.

[S. 13 amended by s. 103 (1) (a) of Act 35 of 2004 w.e.f. 10 November 2004.]

### **14. Referee**

(1) The drawer of a bill and any indorser may insert in it the name of a person (in this section referred to as a "referee") in case the bill is dishonoured by non-acceptance or non-payment.

(2) The holder may resort to the referee in case of need.

### **15. Optional stipulations by drawer or indorser**

The drawer of a bill and any indorser may insert an express stipulation in the bill—

- (a) negating or limiting his own liability to the holder;
- (b) waiving as regards himself some or all of the holder's duties.

### **16. Acceptance**

(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions—

- (a) it shall be written on the bill and signed by the drawee, the mere signature of the drawee without additional words being sufficient;
- (b) it shall not express that the drawee will perform his promise by any other means than the payment of money.

### **17. Time for acceptance**

A bill may be accepted—

- (a) before it has been signed by the drawer, or while otherwise incomplete;

- (b) where it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment;
- (c) where a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

#### 18. General and qualified acceptance

(1) An acceptance is either general or qualified.

(2) (a) A general acceptance assents without qualification to the order of the drawer.

(b) An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

(3) A qualified acceptance in express terms varies the effect of the bill as drawn and acceptance is qualified where it is—

- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition stated in it;
- (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) local, that is to say, an acceptance to pay only at a particular specified place;
- (d) qualified as to time;
- (e) the acceptance of one or more of the drawees, but not of all.

#### 19. Inchoate instruments

(1) Where a simple signature on blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser, and in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) (a) Subject to subsection (3), in order that any such instrument when completed may be enforceable against any person who became a party to it prior to its completion, it shall be filled up within a reasonable time, and strictly in accordance with the authority given.

(b) Reasonable time for the purpose of paragraph (a) is a question of fact.

(3) Where any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

## **20. Delivery**

(1) (a) Subject to paragraph (b), every contract on a bill, whether it be the drawer's, the acceptor's or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect to it.

(b) Where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery—

(a) in order to be effectual shall be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

(3) Where the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(4) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

## **21. Capacity of parties**

(1) (a) Capacity to incur liability as a party to a bill is coextensive with capacity to contract.

(b) Nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent under the law relating to corporations.

(2) Where a bill is drawn or indorsed by an interdicted person, or by a minor or a corporation, when the minor or corporation has no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party, subject to the respective rights of parties under articles 1312 and 1338 of the Code Civil Mauricien.

## **22. Signature essential to liability**

(1) No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such.

(2) (a) Where a person signs a bill in a trade or assumed name, he is liable on it as if he had signed it in his own name.

(b) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.



### **23. Bill on which indorsement is forged**

Where a bill is paid in good faith and in the ordinary course of business it is not incumbent on the payer to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be and the payer is deemed to have paid the bill in due course, although the indorsement has been forged or made without authority provided he has verified the regularity of the chain of indorsement.

### **24. Signature by proxy**

A signature by proxy operates as notice that the agent has but a limited authority to sign, and the principal is only bound by the signature if the agent in so signing was acting within the actual limits of his authority.

### **25. Person signing as agent or representative**

(1) Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the interpretation most favourable to the validity of the instrument shall be adopted.

### **26. Value and holder for value**

(1) Valuable consideration for a bill may be constituted by—

- (a) any consideration sufficient to support a contract;
- (b) an antecedent debt or liability, whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

### **27. Accommodation bill or party**

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when the holder took the bill, he knew such party to be an accommodation party or not.

## 28. Holder in due course

(1) A holder in due course is a holder who has taken a bill complete and regular on the face of it, under the following conditions—

- (a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact;
- (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance of it, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

## 29. Presumption of value and good faith

(1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party to it for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course, but if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

## 30. Negotiation of bill

(1) A bill is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

### 31. Requisites of a valid indorsement

An indorsement in order to operate as a negotiation shall comply with the following conditions—

- (a)
  - (i) it shall be written on the bill itself and be signed by the indorser;
  - (ii) the simple signature of the indorser on the bill, without additional words is sufficient;
  - (iii) an indorsement written on an *allonge*, or on a copy of a bill issued or negotiated in a country where copies are recognised, is deemed to be written on the bill itself;
- (b)
  - (i) it shall be an indorsement of the entire bill;
  - (ii) an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to 2 or more indorsees severally does not operate as a negotiation of the bill;
- (c) where a bill is payable to the order of 2 or more payees or indorsees who are not partners, all shall indorse, unless the one indorsing has authority to indorse for the others;
- (d) where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature;
- (e) where there are 2 or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;
- (f) an indorsement may be made in blank or special, and may contain certain terms making it restrictive.

### 32. Conditional indorsement

Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

### 33. Indorsement in blank and special indorsement

(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) Where a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

### 34. Restrictive indorsement

(1) An indorsement is restrictive where it prohibits the further negotiation of the bill or expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill is indorsed "Pay D only", or "Pay D for the account of X", or "Pay D or order for collection".

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.

(3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

### 35. Negotiation of overdue or dishonoured bill

(1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been restrictively indorsed, or discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and from then on no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it has been in circulation for a period of over one year from the time of issue.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour, takes it subject to any defect of title attaching to it at the time of dishonour, but nothing in this section shall affect the rights of a holder in due course.

### 36. Negotiation of bill to party already liable

Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

### 37. Rights of holder

(1) The holder of a bill may—

- (a) sue on the bill in his own name;
- (b) where he becomes a holder in due course, hold the bill free from any defect of title of prior parties, and from mere personal defences, available to prior parties among themselves, and enforce payment against all parties liable on the bill.

(2) Where the holder of a bill whose title is defective—

- (a) negotiates the bill to another holder in due course, that other holder obtains a good and complete title to the bill; and
- (b) obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill.

**38. When presentment for acceptance is necessary**

(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity date of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it shall be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

**39. Time for presenting bill payable after sight**

(1) Subject to this Act, where a bill payable after sight is negotiated, the holder shall present it for acceptance or negotiate it within one year from the time of issue.

(2) Where he does not do so, the drawer and all indorsers prior to that holder are discharged.

**40. Rules as to presentment**

(1) A bill is duly presented for acceptance where it is presented in accordance with the following rules—

- (a) the presentment shall be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;
- (b) where a bill is addressed to 2 or more drawees, who are not partners, presentment shall be made to them all, or to the one who has authority to accept for all;
- (c) where the drawee is dead, presentment may be made to his heirs or representatives;

- (d) where the drawee is bankrupt, or has been allowed to make a *cessio bonorum*, presentment may be made to him or to his trustee, or to the Official Receiver, or assignee, as the case may be;
- (e) where authorised by agreement or usage, a presentment through the post is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

- (a) where the drawee is dead or bankrupt, or has been allowed to make a *cessio bonorum* or is a fictitious person or a person not having capacity to contract by bill;
- (b) where, after the exercise of reasonable diligence, the presentment cannot be effected;
- (c) where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

#### **41. Non-acceptance**

(1) Where a bill is duly presented for acceptance and is not accepted within 10 days from the time of presentment, the person presenting it shall treat it as dishonoured by non-acceptance.

(2) Where he does not treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and indorsers.

#### **42. Dishonour by non-acceptance**

(1) A bill is dishonoured by non-acceptance—

- (a) where it is duly presented for acceptance, and acceptance as is prescribed by this Act is refused or cannot be obtained; or
- (b) where presentment for acceptance is excused and the bill is not accepted.

(2) Subject to this Act, where a bill is dishonoured by non-acceptance, the drawer or any of the indorsers may furnish security for the payment of the bill at maturity, failing which an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

#### **43. Duties as to qualified acceptance**

(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonoured by non-acceptance.

(2) (a) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent to it, the drawer or indorser is discharged from his liability on the bill.

(b) This subsection does not apply to a partial acceptance, of which due notice has been given.

(c) Where a bill has been accepted as to part, it shall be protested as to the balance.

(3) Where the drawer or indorser of a bill receives notice of a qualified acceptance and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented to it.

#### **44. Rules as to presentment for payment**

(1) (a) Subject to this Act, a bill shall be duly presented for payment.

(b) Where it is not so presented, the drawer and indorsers shall be discharged if any prejudice has been caused by the holder's failure to perform his duty and then only to the extent of the loss suffered.

(2) A bill is duly presented for payment where it is presented in accordance with the following rules—

- (a) where the bill is not payable on demand, presentment shall be made on the day it falls due;
- (b) subject to this Act where the bill is payable on demand, presentment shall be made within a year after the issue in order to render the drawer and indorsers liable;
- (c) (i) presentment shall be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as defined in subparagraph (ii), either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if, with the exercise of reasonable diligence, that person can there be found;
- (ii) a bill is presented at the proper place—
  - (A) where a place of payment is specified in the bill and the bill is there presented;
  - (B) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
  - (C) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, if not, at his ordinary residence if known;
  - (D) in any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence;
- (d) where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required;
- (e) where a bill is drawn upon, or accepted by 2 or more persons who are not partners, and no place of payment is specified, presentment shall be made to them all;

- (f) where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment shall be made to his heirs or representatives.

**44A. Presentment of cheque for payment by electronic means**

(1) A banker may present a cheque for payment to the banker on whom it is drawn by transmitting the image and the essential features of the cheque by electronic means or by any other means as may be specified by the Bank of Mauritius instead of by presenting the cheque itself.

(2) Where a cheque is presented for payment under this section, presentment need not be made at the proper place or within a reasonable hour on the business day.

(3) Notwithstanding subsection (1), where, at any time before payment is made, the banker on whom the cheque is drawn requests the banker by whom the cheque was presented to present the cheque itself—

- (a) the presentment under this section shall be disregarded; and
- (b) this section shall not apply in relation to the subsequent presentment of the cheque.

(4) A request under subsection (3) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

(5) Where presentment of a cheque is made under this section, the banker who presented the cheque and the banker on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.

(5A) (a) Where a cheque presented for payment under this section is dishonoured by non-payment, the presenting banker shall issue to the holder an image return document.

(b) Subject to paragraph (d), an image return document may be presented for payment to the presenting banker by the holder, as if that document were the cheque to which it relates.

(c) An image return document shall be considered to be the cheque to which it relates for the purpose of paragraph (b) and shall be admissible as evidence in any legal proceedings.

(d) An image return document may only be presented for payment by the holder under paragraph (b) where—

- (i) the presenting banker states in that document that it is valid for presentment; and
- (ii) the presentment is made within the period stated in that document.

(e) Where the presenting banker states in the image return document that it is not valid for presentment, the holder may request the drawer of the cheque relating to the document to issue another cheque of the same tenor, and the drawer of the cheque shall forthwith comply with the request.



- (f) Where an image return document is lost—
- (i) the holder may apply to the presenting banker for another image return document; and
  - (ii) the presenting banker shall provide the holder with another image return document and cancel the previous image return document.
- (g) An image return document shall contain the following particulars—
- (i) the presenting banker's name and logo;
  - (ii) the image of the cheque which has been dishonoured;
  - (iii) the essential features of the cheque;
  - (iv) the reason for the dishonouring of the cheque;
  - (v) the conditions for presentment, including the period within which the presentment has to be made; and
  - (vi) the signature of a person who is authorised to issue the document on behalf of the presenting banker.
- (h) The presentment of an image return document to the drawer or an endorser shall be considered to be a sufficient notice of the dishonouring of the cheque.

(i) In this subsection—

“holder” means the person to whom an image return document is issued;

“presenting banker” means the banker to whom the cheque was first presented.

(6) Where a notice of dishonour is given by electronic means the sender is deemed to have given notice of dishonour unless the person due to receive it establishes that such notice was not received by him.

(6A) (a) Every banker shall provide the Bank of Mauritius with the image of every cheque presented for payment at the bank's premises, for it to be stored electronically in a central archive owned and operated by the Bank of Mauritius.

(b) The electronic data, display, printout or other output generated by a computer system from the electronic image of a cheque stored in the central archive by or on behalf of a banker shall be admissible as evidence in any legal proceedings.

(7) For the purposes of this section—

- (a) the image of a cheque shall comprise the front view and the back view of the cheque;
- (b) the essential features of a cheque shall include—
  - (i) the serial number of the cheque;
  - (ii) the date on which the cheque was drawn;

- (iii) the code which identifies the banker on whom the cheque is drawn;
- (iv) the account number of the drawer of the cheque;
- (v) the amount of the cheque as entered by the drawer of the cheque;
- (vi) the signature of the drawer and endorser; and
- (vii) any particulars which may be given in the form of letters or figures or any other code which, as between bankers, represents those particulars.

[S. 44A inserted by s. 103 (1) (b) of Act 35 of 2004 w.e.f. 10 November 2004; amended by s. 5 of Act 17 of 2007 w.e.f. 22 August 2007; s. 5 of Act 38 of 2011 w.e.f. 15 December 2011.]

#### **45. Delay of non-presentment for payment**

(1) (a) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence.

(b) Where the cause of delay ceases to operate, presentment shall be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

- (a)
  - (i) where, subject to subparagraph (ii), after the exercise of reasonable diligence, presentment as required by this Act cannot be effected;
  - (ii) the fact that the holder has reason to believe that the bill will, on presentment, be dishonoured does not dispense with the necessity for presentment;
- (b) where the drawee is a fictitious person;
- (c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill and the drawer has no reason to believe that the bill would be paid if presented;
- (d) as regards an indorser, where the bill was accepted or made for the accommodation of the indorser, and he has no reason to expect that the bill would be paid if presented;
- (e) by waiver of presentment, express or implied.

#### **46. Dishonour by non-payment**

(1) A bill is dishonoured by non-payment where—

- (a) it is duly presented for payment and payment is refused or cannot be obtained; or
- (b) presentment is excused and the bill is overdue and unpaid.

(2) Subject to this Act, where a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

#### 47. Protest of bill

(1) (a) Where a bill has been dishonoured by non-acceptance it shall be duly protested for non-acceptance, and where a bill which has not been previously dishonoured by non-acceptance, or which has been accepted subsequently to protest for non-acceptance, is dishonoured by non-payment, it shall be protested for non-payment.

(b) Where the bill under subsection (1) is not protested the drawer and the indorsers are discharged if any prejudice has been caused by the holder's failure to perform his duties and then only to the extent of the loss suffered.

(2) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(3) Protest shall be made on one of the 4 business days which follow the day on which the bill is payable.

(4) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer or indorsers.

(5) (a) A bill shall be protested at the place where it is dishonoured.

(b) Notwithstanding paragraph (a), where a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it shall be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(6) A protest shall contain a copy of the bill, and shall be signed by the usher making it, and shall specify—

- (a) the person at whose request the bill is protested;
- (b) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or the acceptor could not be found.

(7) Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars of it.

#### 48. Notice of protest and effect of non-notice

(1) Where a bill has been protested for non-acceptance or non-payment, notice of the protest shall be given to the drawer and each indorser, and any drawer or indorser to whom notice is not given is discharged if any prejudice has been caused by the holder's failure to perform his duties and then only to the extent of the loss suffered.

(2) Where a bill is dishonoured by non-acceptance and notice of protest is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission.

*continued on page B7 – 19*



#### 49. Rules as to notice of protest

(1) Notice of protest shall be given in writing by an usher at the instance of the party who has caused the bill to be protested and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(2) Notice of protest shall be given to the party himself or to his agent in that behalf.

(3) Where the drawer or indorser is dead and the party giving notice knows it, the notice shall be given to any heirs or representatives of the drawer or indorser if with the exercise of reasonable diligence they can be found.

(4) Where the drawer or indorser is bankrupt or has been allowed to make a *cessio bonorum*, notice may be given either to the party himself or to the trustee, Official Receiver, or assignee, as the case may be.

(5) Where there are 2 or more drawers or indorsers who are not partners, notice shall be given to each of them, unless one of them has authority to receive the notice for the others.

(6) Notice may be given as soon as the bill is dishonoured and shall be given within 14 days from the day of protest where the party to whom notice is given is in Mauritius and within 6 months where the party is not resident in Mauritius.

#### 50. Excuses for non-protest, non-notice and delay

(1) (a) Delay in protesting or in giving notice of protest is excused where the delay is caused by circumstances beyond the control of the party protesting or giving notice and not imputable to his default, misconduct, or negligence.

(b) Where the cause of the delay ceases to operate, the protest or notice shall be made or given with reasonable diligence.

(2) Protest or notice of protest is dispensed with—

- (a) where, after the exercise of reasonable diligence, the drawer or indorser sought to be charged cannot be found;
- (b) by waiver, express or implied. Protest may be waived before the time of protest has arrived, or after the omission to protest. Notice of protest may be waived before the time to give notice has arrived or after the omission to give the notice;
- (c) as regards the drawer in the following cases—
  - (i) where the drawer and drawee are the same person;
  - (ii) where the drawee is a fictitious person or a person not having capacity to contract;
  - (iii) where the drawer is the person to whom the bill is presented for payment;

- (iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;
- (v) where the drawer has countermanded payment;
- (d) as regards the indorser in the following cases—
  - (i) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he endorsed the bill;
  - (ii) where the indorser is the person to whom the bill is presented for payment;
  - (iii) where the bill was accepted or made for his accommodation.

#### **51. Duties of holder as regards drawee or acceptor**

(1) In order to render the acceptor of a bill liable it is not necessary to protest it.

(2) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when the bill is paid the holder shall forthwith deliver it to the party paying it.

#### **52. Funds in hands of acceptor**

Where the acceptor of a bill has in his hands funds available for its payment, the bill operates as an assignment of the sum for which it is drawn in favour of the holder from the time when the bill is presented to the acceptor.

#### **53. Liability of acceptor**

The acceptor of a bill by accepting it—

- (a) engages that he will pay it according to the tenor of his acceptance;
- (b) is precluded from denying to a holder in due course—
  - (i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;
  - (ii) in the case of a bill payable to a drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;
  - (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

#### **54. Liability of drawer or indorser**

(1) The drawer of a bill by drawing it—

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will

compensate the holder or any indorser who is compelled to pay it, subject to the provisions of this Act as to proceedings on dishonour;

- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.
- (2) The indorser of a bill by indorsing it—
- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, subject to the provisions of this Act as to proceedings on dishonour;
  - (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
  - (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title to it.

#### **55. Stranger signing bill liable as indorser**

(1) The payment of a bill may be guaranteed by an aval given by a person who is not a party to the bill.

(2) An aval must be written on the bill or on a separate document.

(3) (a) An aval is created by an expression indicating an intention to guarantee payment of a bill by the person for whose account the aval is given, followed by signature.

(b) It is also deemed to be created by the simple signature of the giver of the aval placed on the bill, but this does not apply to the signature of the drawee.

(4) Where it is not said for whose account the aval is given, the aval is deemed to be given to the drawer.

(5) No notice of protest need be given to the giver of an aval.

(6) The giver of an aval or all parties who sign, accept or indorse a bill are jointly and severally liable to the holder.

#### **56. Damages against parties**

(1) Where a bill is dishonoured, the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor, or from the drawer, or from a prior indorser—

- (a) the amount of the bill;

- (b) interest on it from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case;
- (c) the expenses of protest and of notice of protest, which shall be deemed to be liquidated damages.

(2) (a) In lieu of the above damages, the holder may, in the absence of any contrary stipulation, recover from the drawer or indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount payable by means of a redraft or fresh bill drawn at sight.

(b) The redraft shall include, beside the sums mentioned above—

- (i) the rate of exchange for bills at sight at the place where the redraft is drawn or the place where the drawer or indorser, as the case may be, resides; and
- (ii) the cost of stamps.

(3) Where by this Act interest may be recovered as damages, that interest may, if justice requires it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

#### **57. Transferor by delivery and transferee**

(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery".

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

#### **58. Payment in due course**

(1) (a) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

(b) "Payment in due course" means payment made at or after the maturity of the bill to the holder in good faith and without notice that his title to the bill is defective.

(2) (a) Subject to paragraphs (b) and (c), where a bill is paid by the drawer or an indorser, it is not discharged.

(b) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce its payment against the acceptor, but may not reissue the bill.

(c) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his



former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

#### **59. Acceptor the holder at maturity**

Where the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

#### **60. Express waiver**

(1) (a) Where the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

(b) The renunciation shall be in writing, unless the bill is delivered to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

(3) Nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

#### **61. Cancellation**

(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent on the bill, the bill is discharged.

(2) (a) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

(b) In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) (a) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative.

(b) Where a bill or any signature on it appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

#### **62. Alteration of bill**

(1) (a) Subject to paragraph (b), where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

(b) Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, that holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In this section, “material alterations” includes any alteration of the date, the sum payable, the time of payment, the place of payment and where a bill has been accepted generally, the addition of a place of payment without the acceptor’s assent.

**63. Acceptance for honour *supra* protest**

(1) (a) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable on it, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable, or for the honour of the person for whose account the bill is drawn.

(b) An acceptance under paragraph (a) shall not prejudice the rights of the holder against all the other parties liable on the bill.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *supra* protest in order to be valid shall—

(a) be written on the bill, and indicate that it is an acceptance for honour;

(b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the protest for non-acceptance, and not from the date of the acceptance for honour.

**64. Liability of acceptor for honour**

(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

**65. Presentment to acceptor for honour**

(1) Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need in accordance with section 14, it shall be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill shall be presented to him not later than the day following its maturity, and where the address of the

acceptor for honour is in some place other than the place where it was protested for non-payment, the bill shall be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment in accordance with section 45.

(4) Where a bill of exchange is dishonoured by the acceptor for honour, the acceptor shall protest its non-payment.

**66. Payment for honour *supra* protest**

(1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable on it, or for the honour of the person for whose account the bill is drawn.

(2) Where 2 or more persons offer to pay a bill for the honour of different parties, the person whose payment discharges most parties to the bill shall have the preference.

(3) Payment for honour *supra* protest, in order to operate as such and not as a mere voluntary payment, shall be mentioned in the protest or form an extension of it.

(4) The payer for honour, or his agent in that behalf, shall declare his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) (a) The payer for honour on paying to the holder the amount of the bill and the expenses incidental to its dishonour is entitled to receive both the bill and the protest.

(b) Where the holder does not on demand deliver them up, he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who is discharged by the payment.

**67. Holder's right to duplicate of lost bill**

(1) Where a bill has been lost, the person who was the holder of it may apply for another bill of the same tenor, by addressing himself to his immediate indorser who is bound to lend his name and assistance towards his immediate indorser and so on from indorser to indorser up to the drawer.

(2) The person who was the holder of the lost bill shall, if required, give security to indemnify all persons liable under the bill alleged to have been lost in case it is found again.

(3) Where the drawer or any indorser on request under subsection (1) refuses to give a duplicate bill, he may be compelled to do so.

(4) The expenses incurred for procuring the duplicate bill shall be borne by the holder who has applied for it.

#### **68. Action on lost bill**

In any action or proceeding upon a bill, the Court or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

#### **69. Rules as to sets**

(1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts shall constitute one bill.

(2) Where the holder of a set indorses 2 or more parts to different persons, he is liable on every such part and every indorser subsequent to him is liable on the part he has himself indorsed as if the parts were separate bills.

(3) (a) The acceptance may be written on any part, and it shall be written on one part only.

(b) Where the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(4) Where the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he shall be liable to the holder.

(5) Subject to subsections (1) to (4), where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

#### **70. Rules where laws conflict**

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties to it are determined as follows—

- (a) (i) subject to subparagraphs (ii) and (iii), the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement or acceptance *supra* protest, is determined by the law of the place where the contract was made;
- (ii) where a bill is issued out of Mauritius, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

- (iii) where a bill, issued out of Mauritius, conforms, as regards requisites in form, to the law of Mauritius, it may, for the purpose of enforcing payment, be treated as valid as between all persons who negotiate, hold, or become parties to it in Mauritius;
- (b) subject to this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where the contract is made;
- (c) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;
- (d) where a bill is drawn out of but payable in Mauritius and the sum payable is not expressed in the currency of Mauritius, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;
- (e) where a bill is drawn in one country and is payable in another, the due date is determined according to the law of the place where it is payable.

## PART II – CHEQUES ON A BANKER

### 71. Cheques

(1) A cheque is a bill of exchange drawn on a banker payable on demand.

(2) Except as otherwise provided in this Part and in Part IV, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

(3) The issuing of a cheque shall not *per se* be an act of trade.

### 72. Presentment of cheque for payment

Subject to this Act—

- (a) the time within which a cheque is to be presented for payment shall be 3 days from the day of issue, exclusive of the day of issue and of any bank or public holiday;
- (b) where a cheque is not presented for payment within the time of its issue as fixed under paragraph (a), and the drawer or the person on whose account it is drawn had the right at the time of the presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of the damage, that is to say, to the extent to which the drawer or person is the creditor of the banker to a larger amount than he would have been had the cheque been paid;

- (c) the holder of the cheque as to which the drawer or person is discharged shall be a creditor, in lieu of the drawer or person, of the banker to the extent of the discharge, and entitled to recover the amount from him.

### **73. Revocation of banker's authority**

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (a) countermand of payment;
- (b) notice of the customer's death.

### **74. General and special crossings**

(1) Where a cheque bears across its face an addition of—

- (a) the words "and company" or any abbreviation of those words between 2 parallel transverse lines, either with or without the words "not negotiable"; or
- (b) 2 parallel transverse lines simply, either with or without the words "not negotiable",

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially and to the banker.

### **75. Crossing by drawer or after issue**

(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally, the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

### **76. Crossing a material part of cheque**

(1) A crossing authorised by this Act is a material part of the cheque.

(2) No person shall obliterate or, except as authorised by this Act, add to or alter the crossing.

### **77. Duties of banker as to crossed cheques**

(1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment.

(2) Where the banker on whom a cheque is drawn which is crossed under subsection (1) nevertheless pays the same, or pays a cheque crossed generally, otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

(3) Where a cheque is presented for payment which does not at any time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

### **78. Protection to banker and drawer**

Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner.

### **79. Effect of crossing on holder**

Where a person takes a crossed cheque which bears on it the words "not negotiable", he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

### **79A. Non-transferable cheques**

Where a cheque is crossed and bears across its face the words "account payee" or "a/c payee", either with or without the word "only", the cheque shall not be transferable, but shall be valid as between the parties thereto.

[S. 79A inserted by s. 103 (1) (c) of Act 35 of 2004 w.e.f. 10 November 2004.]

### **80. Protection to collecting banker**

Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title, the banker shall not incur any liability to the true owner of the cheque by reason only of having received the payment.

### **PART III – PROMISSORY NOTES**

#### **81. Promissory notes**

(1) A promissory note is an unconditional promise in writing made by one person to another dated and signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

#### **82. Delivery necessary**

A note is inchoate and incomplete until delivery to the payee or bearer.

#### **83. Liability of parties**

All parties who sign a note, whether as makers, indorsers or givers of an aval are jointly and severally liable to the holder.

#### **84. Liability of maker**

The maker of a note by making it—

- (a) engages that he will pay it according to its tenor;
- (b) is precluded from denying to a holder in due course the existence of the payee and his capacity to indorse.

#### **85. Application of Part I**

(1) Subject to this Part, the provisions of this Act relating to bills apply, with the necessary modifications, to notes.

(2) In applying those provisions, the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills shall not apply to notes—

- (a) presentment for acceptance;
- (b) acceptance;
- (c) acceptance *supra* protest;
- (d) bills in a set.

### **PART IV – MISCELLANEOUS**

#### **86. Accepted accounts**

(1) In this section, "accepted accounts" means the instrument, whereby goods specified in it, purport to have been sold by a trader for a price which the buyer undertakes to pay at a fixed future date or time.



(2) An accepted account shall not—

- (a) constitute a valid pledge, guarantee or security; or
- (b) give any right or title to the holder,

unless it contains a declaration signed by the buyer and the seller of the goods to the effect that the transaction is genuine and *bona fide*, and that the goods have actually been sold and delivered.

**87. Dividend warrants may be crossed**

The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

**88. Limitation**

(1) No action on a bill, other than a cheque, or on a note shall be brought after 5 years from the date of maturity.

(2) No action on a cheque shall be brought after one year from the date of maturity.

**89. Saving**

Nothing in this Act shall affect any enactment relating to—

- (a) stamps, registration or the revenue;
  - (b) companies.
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