

## BILLS OF EXCHANGE ACT 34 OF 1964

[ASSENTED TO 11 MAY 1964]

[DATE OF COMMENCEMENT: 15 MAY 1964]

*(Afrikaans text signed by the State President)*

**as amended by**

Suretyship Amendment Act 57 of 1971  
Bills of Exchange Amendment Act 58 of 1977  
Finance Act 77 of 1986  
Bills of Exchange Amendment Act 56 of 2000

**ACT**

**To consolidate and amend the laws relating to bills of exchange, cheques and promissory notes.**

### DEFINITIONS (s 1)

#### 1 Definitions

In this Act, unless the context otherwise indicates-

**'acceptance'** means an acceptance completed by delivery or notification;

**'action'** .....

[Definition of 'action' deleted by s. 1 (a) of Act 56 of 2000.]

**'bank'** means a body of persons, whether incorporated or not, that carries on the business of banking, and includes the South African Reserve Bank contemplated in the South African Reserve Bank Act, 1989 (Act 90 of 1989), a bank as defined in section 1 of the Banks Act, 1990 (Act 94 of 1990), a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act 124 of 1993), and the Post Office Savings Bank as defined in section 1 of the Post Office Act, 1958 (Act 44 of 1958);

[Definition of 'banker' substituted by definition of 'bank' by s. 1 (b) of Act 56 of 2000.]

**'bearer'** means the person in possession of a bill which is payable to bearer.

**'bill'** means a bill of exchange as defined in section *two*;

**'cheque'** means a bill drawn on a bank payable on demand;

[Definition of 'cheque' substituted by s. 1 (c) of Act 56 of 2000.]

**'collecting bank'** means a bank collecting payment of a cheque or other document contemplated in section 83;

[Definition of 'collecting bank' inserted by s. 1 (d) of Act 56 of 2000.]

**'delivery'** means actual or constructive transfer of possession from one person to another;

**'foreign bill'** .....

[Definition of 'foreign bill' inserted by s. 1 (a) of Act 58 of 1977 and deleted by s. 1 (e) of Act 56 of 2000.]

**'holder'** means the payee of indorsee of a bill who is in possession of it, or the bearer thereof;

**'indorsement'** means an indorsement completed by delivery;

**'inland bill'** .....

[Definition of 'inland bill' inserted by s. 1 (b) of Act 58 of 1977 and deleted by s. 1 (f) of Act 56 of 2000.]

**'issue'** means the first delivery of a bill, complete in form, to a person who takes it as a holder;

**'non-business day'** means a day contemplated in section 3 of the Public Holidays Act, 1994 (Act 36 of 1994);

[Definition of 'non-business day' substituted by s. 1 (g) of Act 56 of 2000.]

'note' means a promissory note as defined in section 87;

[Definition of 'note' used as a noun substituted by s. 1 (h) of Act 56 of 2000.]

'note' .....

[Definition of 'note' used as a verb deleted by s. 1 (i) of Act 56 of 2000.]

'payment in due course' means payment made at or after the maturity of a bill to the holder thereof in good faith and, if his title to the bill is defective, without notice thereof.

'Post Office cheque' .....

[Definition of 'Post Office cheque' inserted by s. 5 (a) of Act 77 of 1986 and deleted by s. 1 (j) of Act 56 of 2000.]

'value' .....

[Definition of 'value' deleted by s. 1 (k) of Act 56 of 2000.]

'warrant-voucher' .....

[Definition of 'warrant-voucher' inserted by s. 5 (b) of Act 77 of 1986 and deleted by s. 1 (l) of Act 56 of 2000.]

## **CHAPTER I (ss 2-70)**

### *Bills of exchange - form and interpretation (ss 2-19)*

#### **2 Definition of and requirements for bill of exchange**

(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, 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 a specified person or his order, or to bearer.

(2) An instrument which does not comply with the requirements specified in subsection (1) 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 subsection (1) 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 of a particular account to be debited with the amount;
- (b) a statement of the transaction which gives rise to the bill;
- (c) a statement on the bill that it is drawn against specified documents attached thereto for delivery on acceptance or on payment of the bill, as the case may be; or
- (d) a statement on the bill that it is drawn under or against a specified letter of credit or other similar authority,

is unconditional within the meaning of the said subsection.

(4) A bill is not invalid by reason-

- (a) that it is not dated;
- (b) that it does not specify the value given, or that any value has been given therefor;
- (c) that it does not specify where it is drawn or where it is payable.

#### **3 Effect if different parties to a bill are the same person, or drawee a fictitious person or not having capacity to contract**

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

(2) If in a bill, drawer and drawee are the same person, or 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.

#### **4 Requirements as to drawee**

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

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

#### **5 Requirements as to payee**

(1) If a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty therein.

(2) A bill may be drawn payable-

(a) to two or more payees jointly;

(b) to one of two, or one or some of several, payees, in the alternative; or

(c) to the holder of an office.

(3) If the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.

[Sub-s. (3) substituted by s. 2 of Act 56 of 2000.]

#### **6 Negotiability of bills**

(1) A bill must be payable either to bearer or to order to be negotiable.

(2) A bill is payable to bearer if it is expressed to be so payable, or if the only or last indorsement on it is an indorsement in blank, or if it is expressed to be payable to the order of 'cash' or to 'cash or order'.

[Sub-s. (2) substituted by s. 3 of Act 56 of 2000.]

(3) A bill is payable to order if it is expressed to be so payable, or if 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.

(4) If 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.

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

#### **7 Sum payable**

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

(a) with interest;

(b) by stated instalments;

(c) by stated instalments, and upon default in payment of any instalment the whole becomes due by virtue of a provision to that effect in the bill; or

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

(2) If 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) If a bill is expressed to be payable with interest, interest runs, unless the

instrument otherwise provides, from the date of the bill or, if it is undated, from the date of issue thereof.

### **8 When bill is payable on demand**

(1) A bill is payable on demand-

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

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

### **9 When a future time is determinable**

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

- (a) at the expiration of a fixed period after date or sight; or
- (b) on, or at the expiration of 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, or after the occurrence of, a specified event which may or may not happen, is not a bill, and the happening of the event does not cure the defect.

### **10 Omission of date in bill payable after date**

If a bill expressed to be payable at the expiration of a fixed period after date, is issued undated, or if the acceptance of a bill, payable at the expiration of a fixed period after sight, is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that-

- (a) if the holder in good faith and by mistake inserts a wrong date; or
- (b) if a wrong date is inserted and the bill subsequently comes into the hands of a holder in due course,

the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

### **11 Presumption as to correctness of date, and antedating and post-dating, and date of a non-business day**

(1) If a bill, or the acceptance of or any indorsement on a bill, is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement of the bill, 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 the date of a non-business day.

### **12 Computation of time of payment**

If a bill is not payable on demand, the day on which it falls due is determined as follows, namely-

- (a) if the date on which the bill would fall due is a non-business day, the due date thereof shall be the next business day;
- (b) there are no days of grace;
- (c) if a bill is payable at the expiration of 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 period is to begin to run,

and by including the day of payment;

- (d) if a bill is payable at the expiration of a fixed period after sight, the period begins to run from the date of the acceptance, if the bill is accepted, and from the date of noting or protest, if the bill is noted or protested for non-acceptance.

**13** .....

[S. 13 repealed by s. 4 of Act 56 of 2000.]

**14 Optional stipulations by drawer or indorser**

The drawer and any indorser of a bill may insert therein an express stipulation-

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

**15 Definition and requisites of 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 requirements, namely-

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

**16 Time for acceptance**

(1) A bill may be accepted-

- (a) before it has been signed by the drawer, or while otherwise incomplete;  
 (b) when it is overdue, or after it has already been dishonoured by non-acceptance or non-payment.

(2) If a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder is, in the absence of any different agreement, entitled to have the bill accepted as from the date of first presentment thereof to the drawee for acceptance.

**17 General and qualified acceptances**

(1) An acceptance is either-

- (a) general; or  
 (b) qualified.

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

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

(3) (a) A qualified acceptance in express terms varies the effect of the bill as drawn.

(b) In particular an acceptance is qualified if it-

- (i) is a conditional acceptance, that is to say, if it makes payment by the acceptor dependent on the fulfilment of a condition therein stated;  
 (ii) is a partial acceptance, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

- (iii) is an acceptance to pay only at a particular specified place and not elsewhere;
- (iv) qualifies the time of payment;
- (v) is the acceptance of one or more of the drawees but not of all.

### **18 Inchoate instruments**

(1) If a person places his signature upon a blank paper and delivers such paper to any other person in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the said signature for that of the drawer, the acceptor or an indorser.

[Sub-s. (1) substituted by s. 5 of Act 56 of 2000.]

(2) If a bill is wanting in any material particular, the person in possession of it has in like manner a *prima facie* authority to fill up the omission in question in any way he thinks fit.

(3) In order that any instrument referred to in subsection (1) or (2) may, when completed, be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on or, if no time is agreed on, within a reasonable time, and strictly in accordance with the authority given: Provided that if any such instrument after completion thereof 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 the time allowed and strictly in accordance with the authority given.

(4) For the purposes of subsection (3) the question what a reasonable time is, is a question of fact.

### **19 Delivery as requirement for contract on a bill**

(1) No contract on a bill, whether it be the drawer's, the acceptor's, an indorser's, or that of the signer of an aval, shall be complete and irrevocable, until delivery of the instrument in question in order to conclude such a contract: Provided that if an acceptance or an aval is written on a bill and the drawee or the signer of the aval, as the case may be, gives notice to, or according to the directions of, the person entitled to the bill that he has accepted or signed it, the acceptance or aval then becomes complete and irrevocable.

[Sub-s. (1) substituted by s. 6 of Act 56 of 2000.]

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

- (a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing the bill, 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 ownership in the bill.

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

(4) If 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.

### *Capacity and authority of parties (ss 20-24)*

### **20 Capacity of parties**

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

contract.

[Sub-s. (1) amended by s. 2 of Act 57 of 1971.]

(2) If a bill is drawn or indorsed by a minor or a corporation having no capacity or power to incur liability on a bill, the drawing or indorsement of the bill entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

## **21 Signature as requirement for liability**

No person is liable as drawer, acceptor or indorser of a bill if he has not signed it as such: Provided that-

- (a) if a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name; and
- (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 of that firm.

## **22 Forged and unauthorized signatures**

Subject to the provisions of this Act, if a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: Provided that nothing in this section contained shall affect the ratification of an unauthorized signature not amounting to forgery.

## **23 .....**

[S. 23 repealed by s. 7 of Act 56 of 2000.]

## **24 Signature as agent or in representative capacity**

(1) If a person signs a bill as drawer, acceptor or indorser and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative capacity, or if he signs as drawer and the name of the principal appears with his signature, he is not personally liable thereon: Provided that if such person had in fact no authority to sign for or on behalf of the person indicated as principal, or in a representative capacity, he shall be personally liable on the said bill.

[Sub-s. (1) amended by s. 8 of Act 56 of 2000.]

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

### *The consideration for a bill (ss 25-28)*

## **25 Holder for value**

A holder takes a bill for value if he takes it under onerous title.

[S. 25 substituted by s. 9 of Act 56 of 2000.]

## **26 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 therefor, but 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, irrespective of whether or not, when such holder took the bill, he knew such party to be an accommodation party.

## 27 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 circumstances, namely-

- (a) he must have become the holder of it before it was overdue, and if it had previously been dishonoured, without notice thereof; and
- (b) he must have taken the bill in good faith and for value, and at the time the bill was negotiated to him, he must have 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 if he obtained the bill, or the acceptance thereof, by fraud or other unlawful means, or for an illegal consideration, and is deemed to have been so defective if he negotiates the bill in breach of faith, or under such circumstances as amount to 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.

## 28 Presumption as to value and good faith

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

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course: Provided that 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 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.

### *Negotiation of bills (ss 29-36)*

## 29 Negotiation of bill

(1) A bill is negotiated if it is transferred from one person to another in such a 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) If the holder of a bill payable to his order transfers it 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 bill indorsed by the transferor.

[Sub-s. (4) substituted by s. 10 of Act 56 of 2000.]

(5) If 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.

## 30 Manner of indorsing

(1) An indorsement, in order to effect a negotiation of a bill, must be written on the bill itself, be signed by the indorser, and be an indorsement of the entire bill: Provided that an indorsement written on the allonge of a bill or on a copy of a bill issued or negotiated in a country where copies are recognized, shall be deemed to be written on the bill itself.

(2) The simple signature of the indorser on the bill without additional words is sufficient to constitute an indorsement.



(3) A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not effect a negotiation of the bill.

(4) If a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse in order to effect a negotiation of the bill, unless the one indorsing has authority to indorse for the others.

(5) If in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may, in order to effect a negotiation of the bill, indorse the bill as he is therein described, adding, if he thinks fit, his proper signature.

[Sub-s. (5) substituted by s. 11 of Act 56 of 2000.]

(6) If there are two or more indorsements on a bill, each indorsement is deemed, until the contrary is proved, to have been made in the order in which it appears on the bill.

(7) An indorsement may be made in blank or special and may also contain terms making it restrictive.

### **31 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) If 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 himself or his order or to some other person or the order of the latter.

### **32 Restrictive indorsement**

(1) An indorsement is restrictive if it prohibits the further negotiation of the bill, or if it 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 thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorizes him to do so.

(3) If a restrictive indorsement authorizes 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.

### **33 Conditional indorsement**

If 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.

### **34 Continuance of negotiability, and negotiation of overdue or dishonoured bill**

(1) If a bill is negotiable in its origin it continues to be negotiable until it has been-

- (a) restrictively indorsed; or
- (b) discharged by payment or otherwise.

(2) If an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and 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) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section when it appears on the face of it to have been in circulation for an unreasonable length of time.

(b) The question what an unreasonable length of time for the purpose of paragraph (a) is, is a question of fact.

(4) Every negotiation of a bill is *prima facie* deemed to have been effected before the bill was overdue, except where the date of the relevant indorsement is a date after the maturity of the bill.

(5) If 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 thereto at the time of dishonour: Provided that nothing in this subsection contained shall affect the rights of a holder in due course.

### **35 Negotiation of bill to party already liable thereon**

If a bill is negotiated back to the drawer, a prior indorser or the acceptor, such drawer, indorser or acceptor may, subject to the provisions of 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.

### **36 Rights and powers of the holder**

The rights and powers of the holder of a bill are as follows, namely-

- (a) he may sue on the bill in his own name;
- (b) if he is a holder in due course, he holds the bill free from any defect in the title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) if the title is defective and-
  - (i) he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; or
  - (ii) he obtains payment of the bill in due course the person who made such payment gets a valid discharge of the bill.

#### *General duties of the holder (ss 37-50)*

### **37 When presentment for acceptance is necessary, and delay in such presentment**

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

(2) If a bill expressly stipulates that it shall be presented for acceptance, or if a bill is drawn payable elsewhere than at the place of residence or business of the drawee, it must 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) If the holder of a bill, drawn payable elsewhere than at the place of residence or business of the drawee, has no 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.

### **38 Time for presenting for acceptance bill payable after sight**

(1) (a) Subject to the provisions of this Act, if a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time within the meaning of subsection (2).

(b) If the holder does not do so, the drawer and all indorsers prior to that holder are discharged.

(2) In determining what is a reasonable time for the purposes of paragraph (a) of subsection (1), regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

### **39 Rules as to presentment for acceptance, and excuses for non-presentment**

(1) A bill is duly presented for acceptance if it is presented in accordance with the following rules, namely-

- (a) the presentment must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee, or to a person authorized to accept or refuse acceptance on his behalf;
- (b) if a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, in which case presentment may be made to him only;
- (c) if the drawee is dead, presentment may be made to his executor;
- (d) if the drawee is insolvent, presentment may be made to him or his trustee;
- (e) a presentment by post, if in due course, is sufficient.

(2) Presentment in accordance with the provisions of subsection (1) is excused, and a bill may be treated as dishonoured by non-acceptance-

- (a) if the drawee is dead or insolvent, or is a fictitious or non-existing person or a person not having capacity to contract;  
[Para. (a) substituted by s. 12 of Act 56 of 2000.]
- (b) if, after the exercise of reasonable diligence, such presentment cannot be effected; or
- (c) if, when irregular presentment is made, acceptance is 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.

### **40 Failure to accept within customary time**

- (a) If a bill is duly presented for acceptance and it is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance.
- (b) If such person does not do so, the holder shall lose his right of recourse against the drawer and indorsers.

### **41 When bill is dishonoured by non-acceptance, and consequences thereof**

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

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

(2) Subject to the provisions of this Act, if a bill is dishonoured by non-acceptance, a right of recourse against the drawer and indorsers immediately accrues to

the holder, and no presentment for payment is necessary.

#### **42 Duties as to and consequences of qualified acceptance**

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

(2) If a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, the drawer or such indorser is discharged from his liability on the bill: Provided that the provisions of this subsection do not apply to a partial acceptance whereof due notice has been given.

(3) If the drawer or an 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 thereto.

#### **43 Rules as to presentment for payment**

(1) (a) Subject to the provisions of this Act, a bill must be duly presented for payment in accordance with the provisions of subsection (2).

(b) If it is not so presented, the drawer and indorsers shall be discharged.

(2) A bill is duly presented for payment if it is presented in accordance with the following rules, namely-

- (a) if the bill is not payable on demand, presentment must be made on the day it falls due;
- (b) if the bill is payable on demand, presentment must, subject to the provisions of this Act, be made within a reasonable time, within the meaning of subsection (3), after its issue, in order to render the drawer liable, and within such a reasonable time after its endorsement, in order to render the indorser liable;
- (c) presentment must, subject to the provisions of subsection (5), be made by the holder, or by some person authorized to receive payment on his behalf, at a reasonable hour on a business day, at the proper place within the meaning of subsection (4), either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can be found there;
- (d) if the bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;
- (e) if the drawee or acceptor of the bill is dead and no place of payment is specified, presentment must be made to his executor, if there is one and, with the exercise of reasonable diligence, he can be found.

(3) In determining what is a reasonable time for the purposes of paragraph (b) of subsection (2), regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

(4) A bill is presented at the proper place if-

- (a) when a place of payment is specified in the bill, the bill is presented there;
- (b) when no place of payment is specified, but the address of the drawee or acceptor is given in the bill, the bill is presented there;

- (c) when no place of payment is specified, and no address is given, the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary place of residence, if known;
  - (d) in any other case, the bill is presented wherever the drawee or acceptor can be found, or it is presented at his last known place of business or residence.
- (5) A presentment by post, if in due course, is sufficient.

#### **43A Presentment for payment by bank**

(1) A cheque may, provided the requirements of subsection (1), paragraphs (a) and (b) of subsection (2) and subsection (3) of section 43 are met, be presented for payment to the drawee by a collecting bank on behalf of the holder-

- (a) at a place designated in the rules of any clearing house of which both the drawee bank and the collecting bank are members;
- (b) at a place of payment designated by the drawee bank; or
- (c) by means of data transmitted in terms of an agreement to which both the drawee bank and the collecting bank are party by, or on behalf of, the collecting bank to the drawee bank, identifying the cheque with reasonable certainty.

(2) For the purpose of paragraph (c) of subsection (1), a cheque is deemed to be identified with reasonable certainty if-

- (a) the sum ordered to be paid by the cheque;
- (b) the number of the cheque, if any;
- (c) the name and number of the account against which the cheque is drawn; and
- (d) the drawee bank,

are specified or are readily ascertainable by the drawee bank from the date transmitted by or on behalf of the collecting bank.

(3) Where a cheque is presented for payment in terms of this section, the drawee shall not be relieved of any liability to which the drawee would have been subject in relation to the cheque if it had been presented by being exhibited to the drawee.

[S. 43A inserted by s. 13 of Act 56 of 2000.]

#### **44 When presentment for payment may be delayed or dispensed with**

(1) Delay in making presentment for payment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence: Provided that if the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with-

- (a) if after the exercise of reasonable diligence, presentment as required by this Act cannot be effected;
- (b) if the drawee is a fictitious person;
- (c) as regards the drawer, if 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, if the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill will be paid if presented;

- (e) by express or implied waiver of presentment;
- (f) if the drawee or acceptor is insolvent.

(3) Subject to the provisions of subsection (2), 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.

#### **45 When bill is dishonoured by non-payment, and consequences thereof**

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

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

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

#### **46 Notice of dishonour and effect of failure to give such notice**

Subject to the provisions of this Act, if a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that-

- (a) if a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course who became such a holder subsequent to the omission, shall not be prejudiced by the omission;
- (b) if a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill was accepted in the meantime.

#### **47 Rules as to notice of dishonour**

(1) Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules, namely-

- (a) the notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;
- (b) the notice may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;
- (c) the notice may be given in writing, or by personal communication, 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;
- (d) the return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed to be a sufficient notice of dishonour;
- (e) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication;
- (f) if notice of dishonour is required to be given to any person, it may be given either to such person himself or to a person authorized to receive such notice on his behalf;
- (g) if the drawer or an indorser is dead, and the party giving notice knows it, the notice must be given to the executor, if there is one and, with the exercise of reasonable diligence, he can be found;
- (h) if the drawer or an indorser is insolvent, notice may be given either to himself, or to his trustee;

- (i) if there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for one or more of the others, in which case notice to the one having such authority shall be deemed to be notice to such other person or persons;
- (j) the notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time within the meaning of subsection (5);
- (k) if a bill, when dishonoured, is in the hands of an agent, he may give notice either to the parties liable on the bill or to his principal, and if he gives notice to his principal, he must do so within the same period of time that would have been allowed if he were the holder.

(2) If the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(3) If notice is given by or on behalf of an indorser entitled to give notice by virtue of the provisions of subsection (1), it ensures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(4) A misdescription of the bill in the notice shall not vitiate the notice, unless the party to whom the notice is given is, in fact, misled thereby.

(5) In the absence of special circumstances, it is deemed that notice is not given within a reasonable time for the purposes of paragraph (j) of subsection (1), unless notice is given or the notice is posted-

- (a) on the business day next after the day on which the bill is dishonoured; or
- (b) if that business day is a Saturday, on the business day next after that Saturday.

[Sub-s. (5) substituted by s. 2 of Act 58 of 1977.]

(6) A principal upon receipt of notice contemplated in paragraph (k) of subsection (1) has himself the same period of time for giving notice that he would have had if the agent had been an independent holder.

(7) If a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after dishonour.

(8) If a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the Post Office.

#### **48 When notice of dishonour may be delayed or dispensed with**

(1) Delay in giving notice of dishonour is excused if the delay is caused by circumstances beyond the control of the party giving notice and not imputable to his default, misconduct, or negligence: Provided that if the cause of delay ceases to operate, the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with-

- (a) if after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be held liable;
- (b) by express or implied waiver, either before the time of giving notice has arrived, or after omission to give due notice;
- (c) as regards the drawer in the following cases, namely-

- (i) where 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 not bound, as between himself and the drawer, to accept or pay the bill;
- (v) where the drawer has countermanded payment;
- (d) as regards an indorser in the following cases, namely-
  - (i) where the drawee is a fictitious person or a person not having capacity to contract, and such indorser was aware thereof at the time he indorsed the bill;
  - (ii) where such indorser is the person to whom the bill is presented for payment;
  - (iii) where the bill was accepted or made for the accommodation of such indorser.

#### **49 Protest of bill, and consequences of failure to protest**

(1) .....

[Sub-s. (1) substituted by s. 3 (a) of Act 58 of 1977 and deleted by s. 14 (a) of Act 56 of 2000.]

(1A) (a) If a bill has been dishonoured by non acceptance or non-payment it may be protested for non-acceptance or non-payment, as the case may be, but it shall not be necessary so to protest any such bill to hold the drawer or any indorser liable.

(b) If 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 may be protested for non-payment, and in such event no further presentment for payment to, or demand on, the drawee is necessary.

[Sub-s. (1A) inserted by s. 3 (b) of Act 58 of 1977 and substituted by s. 14 (b) of Act 56 of 2000.]

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

(3) (a) Subject to the provisions of this Act, if it is intended to protest a bill, it must be protested not later than on the business day next after the day on which it is dishonoured, or, if such business day is a Saturday, not later than on the business day next after that Saturday.

(b) If it is intended to protest a bill in terms of paragraph (a) of the proviso to subsection (5), it must be protested-

- (a) if received during business hours, on the day of its return or, if that day is a Saturday, not later than on the business day next after that Saturday; or
- (b) if not received during business hours, not later than on the next business day, not being a Saturday.

[Sub-s. (3) substituted by s. 3 (c) of Act 58 of 1977.]

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

(5) A bill must be protested at the place where it is dishonoured: Provided that-



- (a) if a bill is presented by post and returned by post dishonoured, it may be protested at the place to which it is returned;
- (b) a bill protested as is contemplated in the proviso to paragraph (a) of subsection (1) or in paragraph (b) of subsection (1A) must be protested at the place where it is expressed to be payable.

[Para. (b) substituted by s. 3 (d) of Act 58 of 1977.]

(6) A protest must contain a copy of the bill and be signed by the notary making it, and must specify-

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

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

(8) .....

[Sub-s. (8) deleted by s. 14 (c) of Act 56 of 2000.]

(9) Delay in protesting is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence: Provided that if the cause of delay ceases to operate, the bill must be protested with reasonable diligence.

[Sub-s. (9) amended by s. 14 (d) of Act 56 of 2000.]

## **50 Duties of holder towards acceptor as regards presentment for payment, protest and notice of dishonour, and towards payer on payment of bill**

(1) If a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2) If by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by an omission to present the bill for payment on the day that it matures.

(3) It is not necessary, in order to render the acceptor of a bill liable, to protest such bill or to give notice of dishonour to such acceptor.

(4) Subject to the provisions of section 43A, when a holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid, the holder shall forthwith deliver it to the party paying it.

[Sub-s. (4) substituted by s. 15 of Act 56 of 2000.]

### ***Liabilities of parties (ss 51-56)***

## **51 Liability of drawee**

A bill, of itself, does not operate as an assignment of funds in the hands of the drawee and available for the payment thereof, and the drawee of a bill who does not accept as required by this Act, is not liable on the instrument.

## **52 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 drawer's order, the then capacity of the drawer to indorse, but not the genuineness or the 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 the validity of his indorsement.

### **53 Liability of drawer and of 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 an indorser who is compelled to pay it, provided the requisite proceedings on dishonour are duly taken;
  - (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 is dishonoured he will compensate the holder, or an indorser who is compelled to pay it, provided the requisite proceedings on dishonour are duly taken;
  - (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 thereto.

### **54 Liability of stranger signing bill**

If a person signs a bill otherwise than as drawer, acceptor, signer of an aval or drawee certifying a cheque, he thereby incurs the liabilities of an indorser to a holder in due course.

[S. 54 substituted by s. 16 of Act 56 of 2000.]

#### **54A Liability of signer of aval**

- (1) The liabilities of the parties to a bill or note may be secured by an aval.
- (2) A person signs a bill or note as the signer of an aval where he signs the bill or note, and by words such as 'as aval', 'as surety' or 'as guarantor' expressly indicates that he is a surety: Provided that the unqualified signature of a person other than the drawer, maker, drawee or payee made on the back of the bill or note payable to order before indorsement by the payee shall be sufficient for such indication.
- (3) The signer of an aval may specify in the bill or note the party for whom he has given his aval and if he does not so specify, he shall be deemed to have given his aval for the drawer or maker, as the case may be: Provided that, if a bill has been accepted, whether before or after the signing of the aval, the signer of that aval shall be deemed to have given his aval for the acceptor.
- (4) The signer of an aval is liable jointly and severally with and as surety for, the party for whom he has given his aval or is deemed to have given his aval.
- (5) Where the signer of an aval pays the bill or note, he acquires the rights arising out of the bill or note against the person for whom he has given his aval or is deemed to

have given his aval and against all parties liable to that person.

[S. 54A inserted by s. 17 of Act 56 of 2000.]

### **55 Damages recoverable from parties to dishonoured bill**

(1) If a bill is dishonoured, the holder may recover from any party liable on the bill, and the drawer, if he 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, the drawer or a prior indorser as damages, which shall be deemed to be liquidated-

- (i) the amount of the bill;
- (ii) interest thereon from the time of presentment for payment if the bill is payable on demand, or from the maturity of the bill in any other case.

[Sub-s. (1) substituted by s. 18 (a) of Act 56 of 2000.]

(2) and (3) .....

[Sub-ss. (2) and (3) deleted by s. 18 (b) of Act 56 of 2000.]

### **56 Liability of transferor by delivery**

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

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

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee, if the latter is 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.

#### *Discharge of bill (ss 57-62)*

### **57 Discharge by payment in due course**

(1) A bill is discharged by payment in due course or is discharged proportionally by payment of part of the amount for which the bill is drawn, noted by indorsement on the bill, if such payment be made by or on behalf of the drawee or acceptor.

(2) Subject to the provisions of subsections (3), (4) and (5), a bill is not discharged if it is paid by the drawer or an indorser.

(3) If a bill is payable to a third party or the order of the latter, is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(4) If a bill is paid by an indorser, or if 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 and antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

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

### **58 Bank paying demand draft where indorsement is forged**

If a bill payable to order on demand is drawn on a bank, and the bank pays the bill in good faith and in the ordinary course of business, it is not incumbent on the bank 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 bank is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority: Provided such indorsement does not purport to be that of a person who is a customer of the bank at the branch on which the said bill is drawn.

[S. 58 amended by s. 19 of Act 56 of 2000.]

**59 Discharge by acceptor becoming holder**

If 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 Discharge by waiver**

(1) Subject to the provisions of subsection (4), if the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor in the manner contemplated in subsection (2), the bill is discharged.

(2) The renunciation of rights contemplated in subsection (1) must be in writing on the bill, unless the bill is delivered up to the acceptor.

(3) Subject to the provisions of subsection (4), the liabilities of any party to a bill may in the manner contemplated in subsections (1) and (2) be waived by the holder before, at, or after its maturity.

(4) Nothing in this section contained shall affect the rights of a holder in due course who had no notice of the renunciation or waiver.

**61 Discharge by cancellation of bill, and discharge of party by cancellation of his signature**

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

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

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

(3) A cancellation made unintentionally or under a mistake or without the authority of the holder, is inoperative: Provided that if a bill or any signature thereon 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 Effect of alteration of bill or acceptance**

(1) If a bill or an acceptance is materially altered the liability of all parties who were parties to the bill at the date of alteration and who did not assent to it, must be regarded as if the alteration had not been made, but any party who has himself made, authorized or assented to the alteration, and all subsequent indorsers are liable on the bill as altered.

(2) For the purposes of subsection (1) material alterations include any alteration of the date, the sum payable, the time of payment and the place of payment, and, if a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

*Acceptance and payment for honour, and payment by referee in case of need (ss 63-66) 63 to 66 inclusive .....*

[Ss. 63 to 67 inclusive repealed by s. 20 of Act 56 of 2000.]

*Lost instruments (ss 67-68)*

**67 Holder's rights if bill or note is lost or destroyed**

(1) If a bill or note is lost or destroyed before it is overdue, the person who was the holder of it may request the drawer or maker to give him another bill or note, as the case may be, of the same tenor, giving adequate security to the drawer or maker, if required, to indemnify him against all persons whatever in case the bill or note alleged to have been lost or destroyed is found again.

(2) If the drawer or maker on such request refuses to give such bill or note he may be compelled to do so.

[S. 67 substituted by s. 24 of Act 56 of 2000.]

#### **68 Action upon lost bill or note**

In any action or proceeding upon a bill or note, other than a proceeding for provisional sentence, the court may order that the loss or non-production of the instrument shall not be set up by way of defence, provided an indemnity be given to the satisfaction of the court against the claims of any other person upon the instrument in question.

[S. 68 substituted by s. 25 of Act 56 of 2000.]

#### ***Bill in a set (s 69)***

#### **69 Rules as to a bill in a set**

(1) If 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 constitutes one bill.

(2) If a holder of a set indorses two 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 said parts were separate bills.

(3) If two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed to be the true owner of the bill: Provided that nothing in this subsection contained shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) (a) The acceptance of a bill drawn in a set may be written on any part thereof, and it must be written on one such part only.

(b) If 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.

(5) If 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 and in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the provisions of subsections (2), (3), (4) and (5), if any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

#### ***Conflict of laws (s 70)***

#### **70 Rules if laws conflict**

If a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows, namely-

(a) the validity of the 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 every supervening contract, such as acceptance, indorsement or that of an aval, is determined by the law of the place where such contract was made, but-

- (i) a bill issued outside the Republic is not invalid by reason only that it is not stamped in accordance with the law of the place of issue; and
- (ii) a bill issued outside the Republic which conforms, as regards requisites in form, to the law of the Republic, may for purposes of enforcing payment thereof be treated as valid as between all persons who negotiate, hold or become parties to it in the Republic;

[Para. (a) amended by s. 26 (a) of Act 56 of 2000.]

- (b) subject to the provisions of this Act, the interpretation of the contract of the drawer, indorser, acceptor or signer of an aval of a bill is determined by the law of the place where such contract is made: Provided that if a bill payable in the Republic is indorsed outside the Republic, the indorsement shall as regards the payer be interpreted according to the law of the Republic;

[Para. (b) substituted by s. 4 of Act 58 of 1977 and by s. 26 (b) of Act 56 of 2000.]

- (c) the duties of the holder with respect to presentment for acceptance or payment, and the necessity for, or sufficiency of, a protest or notice of dishonour or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;
- (d) if a bill is drawn outside but payable in the Republic, and the sum payable is not expressed in currency of the Republic, the amount shall, in the absence of an express stipulation to the contrary, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;
- (e) if a bill is drawn in one country and is payable in another the due date thereof is determined according to the law of the place where it is payable.

#### **CHAPTER II (ss 71-86)**

##### ***Cheques - generally (ss 71-74)***

#### **71 Applicability to cheques of certain provisions relating to certain other bills**

(1) Except as otherwise provided in this chapter, the provisions of this Act applicable to a bill payable on demand apply to a cheque.

(2) Notwithstanding the provisions of subsection (2) of section 3, the provisions of this Act applicable to a cheque apply to a bill drawn by a bank on itself and payable on demand.

[Sub-s. (2) added by s. 27 of Act 56 of 2000.]

#### **72 Presentment of cheque for payment**

(1) Subject to the provisions of this Act-

- (a) if a cheque is not presented for payment within a reasonable time, within the meaning of subsection (2), of its issue, and the drawer or the person on whose account it is drawn had the right, at the time at which such cheque should have been presented for payment, as between himself and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

[Para. (a) amended by s. 28 (a) of Act 56 of 2000.]

- (b) the holder of a cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and be entitled to recover the amount from it.

[Para. (b) substituted by s. 28 (b) of Act 56 of 2000.]

(2) In determining what is a reasonable time for the purpose of paragraph (a) of subsection (1), regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case.

[Sub-s. (2) amended by s. 28 (c) of Act 56 of 2000.]

#### **72A Liability of drawee who has certified cheque**

(1) A cheque is certified if the drawee signs it and adds words to the cheque that indicate that the cheque will be paid or that funds are available for its payment.

(2) When a drawee of a cheque certifies it he-

- (a) undertakes that he will pay the holder, or the drawer or an indorser who has been compelled to pay the cheque, the amount recoverable in terms of section 55 according to the tenor of his certification;
- (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 cheque;
  - (ii) the existence of the payee and his then capacity to indorse.

[S. 72A inserted by s. 29 of Act 56 of 2000.]

#### **72B Prevention of fraud**

Any person who is required by law to have his financial statements audited by a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), or by the Auditor-General, and any person obliged to appoint an accounting officer in terms of section 59 of the Close Corporations Act, 1984 (Act 69 of 1984), shall exercise reasonable care in the custody of cheque forms and in the reconciliation of its bank statements.

[S. 72B inserted by s. 29 of Act 56 of 2000.]

#### **73 Revocation of bank's authority**

The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by receipt of-

- (a) countermand of payment;
- (b) notice of the customer's death or incapacity;
- (c) notice of the customer having been sequestered or wound-up or placed under judicial management or declared a prodigal:

Provided such countermand or notice identifies the cheque, in the case of countermand, and the customer with reasonable particularity and gives the drawee a reasonable opportunity to act on it.

[S. 73 substituted by s. 30 of Act 56 of 2000.]

#### **74 .....**

[S. 74 repealed by s. 31 of Act 56 of 2000.]

#### ***Crossed cheques (ss 75-82)***

#### **75 General and special crossings on cheques**

(1) If a cheque bears across its face an addition of two parallel transverse lines, either with or without the words 'not negotiable', that addition constitutes a crossing and the cheque is crossed generally.

[Sub-s. (1) substituted by s. 32 (a) of Act 56 of 2000.]

(2) If a cheque bears across its face an addition of the name of a bank, either with or without the words 'not negotiable' or 'and Company' or any abbreviation thereof, that addition constitutes a crossing and the cheque is crossed specially and to that bank.

[Sub-s. (2) substituted by s. 32 (b) of Act 56 of 2000.]

#### **75A Non-transferable cheques**

(1) Where a cheque bears boldly across its face the words 'not transferable' or 'non

transferable', either with or without the word 'only' after the payee's name-

- (a) the cheque shall not be transferable but shall be valid as between the parties thereto;
- (b) the cheque shall be deemed to be crossed generally, unless it is crossed specially; and
- (c) the words 'not transferable or 'non transferable' may not be cancelled and any purported cancellation shall be of no effect.

(2) A bank shall not be negligent by reason only of its failure to concern itself with-

- (a) an indorsement intended to prevent transfer of the cheque; or
- (b) words prohibiting transfer, or indicating an intention that it shall not be transferable, other than in the manner provided for in this section.

[S. 75A inserted by s. 33 of Act 56 of 2000.]

#### **76 Crossings by drawer, or after issue**

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

[Sub-s. (1) substituted by s. 34 (a) of Act 56 of 2000.]

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

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

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

(5) If a cheque is crossed specially, the bank to which it is crossed may again cross it specially to another bank for collection.

[Sub-s. (5) substituted by s. 34 (b) of Act 56 of 2000.]

(6) .....

[Sub-s. (6) deleted by s. 34 (c) of Act 56 of 2000.]

#### **77 Crossing material part of cheque**

A crossing authorized by this Act is a material part of the cheque, and it shall not be lawful for any person to obliterate, cancel or, except as authorized by this Act, to add to or alter such a crossing.

[S. 77 substituted by s. 35 of Act 56 of 2000.]

#### **78 Duties of banks as to crossed cheques**

(1) If a cheque is crossed generally, the bank on which it is drawn shall not pay it to any person other than a bank.

(2) If a cheque is crossed specially, the bank on which it is drawn shall not pay it to any person other than the bank to which it is crossed, or the latter's agent for collection, if it is a bank.

(3) If a cheque is crossed specially to more than one bank, except when crossed to two banks of which the one is an agent for collection of the other, the bank on which it is drawn shall refuse payment thereof.

(4) If the bank on which a cheque is drawn-

- (a) pays such cheque if it is crossed as is contemplated in subsection (3);
- (b) pays such cheque to any person other than a bank if it is crossed generally; or
- (c) pays such cheque, if it is crossed specially, to any person other than the bank to which it is crossed or the latter's agent for collection, if it is a



bank,  
 it is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid: Provided that if a cheque is presented for payment and it does not, at the time of presentment, appear to be crossed or to have had a crossing which has been obliterated, or to have a crossing which has been added to or altered, otherwise than as authorized by this Act, the bank 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 authorized by this Act, and of payment having been made to a person other than a bank or the bank to which the cheque is or was crossed, or the latter's agent for collection which is a bank, as the case may be.

[S. 78 substituted by s. 36 of Act 56 of 2000.]

**79 Protection to bank and drawer where cheque is crossed**

If the bank on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, and, if crossed specially, to the bank to which it is crossed, or the latter's agent for collection, which is a bank, the bank 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 thereof.

[S. 79 substituted by s. 37 of Act 56 of 2000.]

**80 Effect of crossing and addition of words 'not negotiable' on rights of holder**

If 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.

**81 True owner of stolen or lost crossed cheque marked 'not negotiable' entitled to compensation from certain subsequent possessors**

(1) If a cheque was stolen or lost while it was crossed as authorized by this Act and while it bore on it the words 'not negotiable', and it was paid by the bank upon which it was drawn, under circumstances which do not render such bank liable in terms of this Act to the true owner of the cheque for any loss he may sustain owing to the cheque having been paid, the true owner shall, if he suffered any loss as a result of the theft or loss of the cheque, be entitled to recover from any person who was a possessor thereof after the theft or loss, and either gave a consideration therefor or took it as a donee, an amount equal to the true owner's said loss or the amount of the cheque, whichever is the lesser.

[Sub-s. (1) substituted by s. 38 (a) of Act 56 of 2000.]

(2) If a person has after the theft or loss paid any such cheque into his account with a bank after having paid, or for the purpose of paying, the amount of the cheque or part thereof to the person from whom he received the cheque, or, on his direction, to any other person, he shall, for the purposes of subsection (1), be deemed to have been a possessor of the cheque and to have given a consideration therefor: Provided that the foregoing provisions of this subsection shall not apply to a collecting bank employing another bank as its agent for the collection of any such cheque.

[Sub-s. (2) substituted by s. 38 (a) of Act 56 of 2000.]

(3) If a person took any such cheque into his possession or custody after the theft

or loss, and fails to furnish the true owner or any person who has in terms of subsection (7) the rights of a true owner, at his request, with any information at his disposal in connection with the cheque, he shall for the purposes of subsection (1) be deemed to have been a possessor of the cheque and either to have given a consideration therefor or to have taken it as a donee.

(4) Every possessor of any such cheque shall, for the purposes of this section, and until the contrary is proved, be deemed either to have given a consideration therefor or to have taken it as a donee.

(5) For the purposes of subsection (1), a bank which receives payment of any such cheque for a customer shall, subject to the provisions of subsection (3), not be regarded as having given a consideration therefor, merely because it has in its own books credited its customer's account with the amount of the cheque before receiving payment thereof, or because any such payment is applied towards the reduction or settlement of any debt owed by the customer to the bank.

[Sub-s. (5) substituted by s. 38 (b) of Act 56 of 2000.]

(6) If in any action under this section the defendant proves that when he became the possessor of the cheque, it did not appear to be crossed or to have had a crossing which had been obliterated, and to bear on it the words 'not negotiable', or to have borne on it any words which might have been the words 'not negotiable' and had been obliterated, he shall, subject to the provisions of subsection (3), not be held liable under this section.

(7) (a) A person who has discharged his liability under subsection (1) and who took the cheque in good faith and without notice of any defect in the title of the transferor, shall as against any prior possessor of the cheque, who became a possessor thereof after the theft or loss and either gave a consideration therefor or took it as a donee, have the rights conferred upon a true owner by subsection (1).

(b) The provisions of paragraph (a) shall *mutatis mutandis* apply to a person who has discharged his liability under the said paragraph or under the said paragraph as applied by this paragraph.

(8) For the purposes of this section the giving of a consideration includes the receiving of any such cheque in reduction or settlement of any debt or liability.

## **82 Application of sections 75 to 81 to certain documents other than cheques**

Sections 75 to and including 81 shall also apply to any document issued by a customer of any bank and intended to enable any person to obtain payment on demand of the sum mentioned in such document from such bank (or from any bank, if the document was issued on behalf of the State), and shall so apply as if the said document were a cheque, and the said sections shall *mutatis mutandis* also apply to any document which-

(a) was issued on behalf of the State;

(b) is drawn upon or addressed to a servant of the State (hereafter in this section called the drawee); and

(c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a bank,

as if the said document were a cheque and as if the drawee were a bank and the State its customer: Provided that nothing in this section contained shall render any such document a negotiable instrument.

[S. 82 substituted by s. 39 of Act 56 of 2000.]

*Unindorsed or irregularly indorsed instruments (ss 83-86)*

**83 Effect of payment to or crediting of accounts by bankers of amounts of unindorsed or irregularly indorsed cheques and certain other documents**

(1) If a bank in good faith and in the ordinary course of business credits the account of its customer with or pays to another bank the amount of

- (a) any cheque drawn on it;
- (b) any other document issued by its customer and intended to enable any person to obtain payment on demand of the sum mentioned in such document from it (or from any bank, if the document was issued on behalf of the State); or
- (c) draft payable on demand drawn by such first-mentioned bank upon itself, or upon its agent who is a bank, whether payable at the head office or some other office of its bank or of such agent,

it shall not incur any liability by reason only of the absence of, or irregularity in, indorsement thereof, and such cheque, document or draft shall be discharged by such crediting of the account in question or by such payment.

[Sub-s. (1) substituted by s. 40 (a) of Act 56 of 2000.]

(2) The provisions of subsection (1) shall *mutatis mutandis* also apply to any document which-

- (a) was issued on behalf of the State;
- (b) is drawn upon or addressed to a servant of the State (hereafter in this section called the drawee); and
- (c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a bank,

as if the said document were a cheque and as if the drawee were a bank and the State its customer.

[Sub-s. (2) substituted by s. 40 (b) of Act 56 of 2000.]

**84 Rights of banks if unindorsed or irregularly indorsed cheques or certain other documents are delivered to them for collection**

(1) If a cheque, or draft or other document referred to in section 83, which is payable to order, is delivered by the holder thereof to a bank for collection, and such cheque, draft or document is not indorsed or was irregularly indorsed by such holder, such bank shall have such rights, if any, as it would have had if, upon such delivery, the holder had indorsed it in blank.

(2) Where a cheque referred to in section 75A is delivered by the holder thereof to a bank for collection and the holder is indebted to the bank, the bank shall be deemed to be the holder thereof taking the cheque in pledge for such indebtedness with the same rights and subject to the same liabilities as the holder had.

[S. 84 substituted by s. 41 of Act 56 of 2000.]

**85 Evidential value of payment of unindorsed or irregularly indorsed cheques or certain other documents**

If an unindorsed or irregularly indorsed cheque, or draft or other document referred to in section 83, has been paid by the bank (including a drawee referred to in subsection (2) of the said section) on which it is drawn, such payment shall be *prima facie* evidence of the receipt by the payee of the sum mentioned in such cheque, draft or document.

[S. 85 substituted by s. 42 of Act 56 of 2000.]

**86 Negotiability of documents referred to in sections 83, 84 and 85**

The provisions of sections *eighty-three*, *eighty-four* and *eighty-five* shall not make negotiable any document which, apart from them, is not negotiable.

**CHAPTER III**

**PROMISSORY NOTES (ss 87-93)**

**87 Promissory note defined**

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

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell it or dispose thereof.

**88 Delivery a requirement for coming into existence of note**

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

**89 Joint or joint and several liability on notes**

(1) A note may be made by two or more persons and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2) If a note runs 'I promise to pay', and is signed by two or more persons, it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.

**90 Time of presentment for payment of note payable on demand and indorsed**

(1) (a) If a note payable on demand has been indorsed, it must be presented for payment within the reasonable time of the indorsement within the meaning of subsection (2).

(b) If it is not so presented, the indorser is discharged.

(2) In determining what is a reasonable time for the purpose of subsection (1), regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) If a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

**91 Presentment of note for payment**

(1) (a) If a note is in the body of it made payable at a particular place, it must be presented for payment at that place to render the maker liable, unless the particular place mentioned is the place of business of the payee and the note remains in his hands.

(b) In no other case is presentment for payment necessary in order to render the maker liable.

(2) Presentment for payment is necessary to render the indorser of a note liable.

(3) (a) If a note is in the body of it made payable at a particular place, presentment at that place is necessary to render an indorser liable.

(b) If a place of payment is indicated by way of memorandum only, presentment

at that place is necessary to render an indorser liable: Provided that presentment to the maker elsewhere, if sufficient in other respects, shall be sufficient to render an indorser liable.

## **92 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 then capacity to indorse.

## **93 Application to notes of provisions relating to bills**

(1) Subject to the provisions of this chapter, and except as by this section provided, 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 do not apply to notes, namely, the provisions relating to-

- (a) presentment for acceptance;
- (b) acceptance; and
- (c) bills in a set.

[Sub-s. (3) substituted by s. 43 of Act 56 of 2000.]

## **CHAPTER IV**

### **SUPPLEMENTARY PROVISIONS (ss 94-102)**

## **94 Good faith**

A thing is deemed to be done in good faith within the meaning of this Act, if it is in fact done honestly, whether it is done negligently or not.

## **95 Signature**

If by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written or printed thereon by some other person, by or under his authority, and the authorized sealing or stamping with a seal or stamp of a corporation shall be sufficient and be deemed to be equivalent to the signing or indorsement of any such instrument or writing.

[S. 95 amended by s. 6 of Act 77 of 1986 and substituted by s. 44 of Act 56 of 2000.]

## **96 Computation of time**

If the reasonable or other time allowed or prescribed by this Act for doing anything is less than four days, non-business days are excluded in reckoning such time.

## **97 .....**

[S. 97 repealed by s. 45 of Act 56 of 2000.]

## **98 Protest when notary not accessible**

(1) If a dishonoured bill or note is authorized to be protested, and the services of a notary cannot be obtained at the place where the bill or note is dishonoured, any landowner or householder of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill and such certificate shall in all respects operate as if it were a formal protest of the bill.

[Sub-s. (1) substituted by s. 46 of Act 56 of 2000.]

(2) The form set out in the First Schedule may be used with the necessary modifications for such certificate, and if so used, shall be sufficient.

**99 Certain provisions of Act applicable to dividend warrants, coupons for interest and postal and money orders**

The provisions of this Act as to crossed cheques shall apply also to warrants for the payment of dividends, to coupons for payment of interest and to postal and money orders.

**100 Laws that are not affected by this Act**

Nothing in this Act shall affect or in any way restrict-

- (a) any law relating to stamp duty or revenue;
- (b) any law relating to banks;
- (c) any law relating to companies;
- (d) the procedure and practice in regard to the granting of provisional sentence in judicial proceedings.

**101 Repeal of laws**

(1) Subject to the provisions of subsection (2), the laws specified in the Second Schedule are hereby repealed.

(2) Such repeal shall not affect the validity of any instrument which, at the commencement of this Act, is valid according to any law so repealed, or of any thing which, according to any such law, was validly done prior to such commencement.

**102 Short title**

This Act shall be called the Bills of Exchange Act, 1964.

**First Schedule**

**FORM OF PROTEST WHICH MAY IN TERMS OF SECTION *ninety-eight* BE USED WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED**

Know all men that I, A. B., landowner or householder of ..... in the district of ..... at the request of C.D., there being no notary available, did on the ..... day of ..... 19..... at ..... demand payment or acceptance from E.F., of the bill of exchange which or a copy of which is hereto annexed, to which demand he answered (state answer, if any) wherefore I now in the presence of G.H., and J.K., do protest the said bill of exchange.

A.B. ....

Witnesses:

G.H. ....

J.K. ....

*N.B.*- The bill itself or a copy of the bill and of everything appearing thereon should be annexed.

**Second Schedule  
LAWS REPEALED**

Where in force	No and year of Law	Title or Subject of Law
Cape of Good Hope Natal	Act 19 of 1893 Law 15 of 1862	Bills of Exchange Act, 1893 To declare Public Holidays and in relation to Bills of Exchange and Promissory Notes becoming payable upon Holidays
Natal	Law 8 of 1887	Bill of Exchange Law, 1886

Orange Free State	Ordinance 28 of 1902	Bills of Exchange Ordinance, 1902
Transvaal	Proclamation 11 of 1902	Bills of Exchange Proclamation, 1902
Transvaal Republic	Proclamation 13 of 1902 Act 30 of 1913	Days of Grace Bills of Exchange (Non-Business days) Act, 1913
Republic	Act 23 of 1919	Bills of Exchange (Time of Noting) Act, 1919
Republic	Act 8 of 1921	Bills of Exchange (Time of Noting) Act, Amendment Act, 1921
Republic	Act 25 of 1943	Bills of Exchange Amendment Act, 1943