

Namibia

## Abolition of Payment by Cheque Act, 2022

### Act 16 of 2022

Legislation as at 30 December 2022

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## Abolition of Payment by Cheque Act, 2022

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Republic of Namibia  
**Annotated Statutes**

**Abolition of Payment by Cheque Act, 2022**  
**Act 16 of 2022**

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**ACT**

To provide for the abolition of the use of cheques as a method of payment in Namibia; to amend or repeal certain laws that refer to cheques as a method of payment or require the opening or maintenance of cheque accounts; and to provide for incidental matters.

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

**1. Definitions**

In this Act unless the context indicates otherwise—

"**Bank**" means the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 2020 (Act [No. 1 of 2020](#));

"**cheque**" means a document that instructs a financial institution of a payer to debit the payer's account for a specified amount and either to transfer the value of that amount to a payee's account for the credit of that payee's account or to pay out cash;

"**effective date**" means the date determined by the Minister under [section 8](#);

"**Minister**" means the Minister responsible for finance;

"**national payment system**" means the national payment system as defined in section 1 of the Payment System Management Act;

"**payment instrument**" means a payment instrument as defined in section 1 of the Payment System Management Act;

"**Payment System Management Act**" means the Payment System Management Act, 2003 (Act [No. 18 of 2003](#)); and

"this Act" includes any determination, directive or other subordinate measure made or issued under any provision of this Act.

## 2. Abolition of cheques as method of payment

- (1) Despite anything to the contrary in the provisions of any other law or agreement, as from the effective date—
  - (a) the use of a cheque as a method of payment in Namibia is abolished;
  - (b) a cheque ceases to be part of the national payment system; and
  - (c) payment in respect of any agreement, arrangement or transaction, or any matter or thing which requires the payment of money must be affected by means of cash or a payment instrument.
- (2) An agreement, arrangement or a transaction entered into or concluded after the effective date which requires that payment be made by cheque is invalid and unenforceable in so far as it relates to the method of payment abolished by this Act.

## 3. Determinations and directives

- (1) The Bank may issue determinations or directives on any matters which the Bank considers necessary or expedient to give effect to the provisions of this Act.
- (2) The Bank must, as soon as possible after issuing a determination or directive under subsection (1), publish the determination or directive in the *Gazette* and in other public media as the Bank considers appropriate in the circumstances.
- (3) A person who contravenes or fails to comply with a determination or directive made under subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

## 4. Offences and penalties

As from the effective date, a person who—

- (a) demands payment by cheque or insists on the use of a cheque as a method of payment;
- (b) issues out a cheque or chequebook to another person with the intention that the cheque is, or the cheques contained in the chequebook are, to be used as a method of payment; or
- (c) refuses or fails to enter into any agreement or other arrangement or to perform on or conclude any transaction which requires payment of money solely because payment under that agreement, arrangement or transaction will not be affected by cheque,

commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

## 5. Amendment or repeal of laws

The laws set out in the Schedule are amended or repealed to the extent set out in that Schedule and, unless the context otherwise indicates—

- (a) any reference in any of those laws to "payment instrument" must be construed as a reference to a payment instrument referred to in [section 1](#);

- (b) any reference in any of those laws to a "bank account" or "banking account" must be construed as a reference to a bank account or banking account opened with a—
  - (i) banking institution authorised to conduct banking business under the Banking Institutions Act, 1998 (Act [No. 2 of 1998](#)); or
  - (ii) building society registered under the Building Societies Act, 1986 (Act [No. 2 of 1986](#)).

## 6. Savings and transitional provisions

- (1) Any—
  - (a) minister who, or any functionary, authority or person that, is responsible for the administration of any primary legislation must, within 12 months from the effective date or such longer period as the Minister may determine by notice in the *Gazette* but which period may not exceed 24 months in total, amend or cause to be amended any subsidiary legislation or legal instrument made under that primary legislation which makes reference to payment by cheque or requires the opening or maintenance of a cheque account so that the subsidiary legislation or legal instrument conforms to the provisions of this Act; and
  - (b) party to any agreement, arrangement or transaction which refers to payment by cheque or requires the opening or maintenance of a cheque account must, within 24 months from the effective date or such longer period as the Minister may determine by notice in the *Gazette* but which period may not exceed 30 months in total, amend or cause the agreement or arrangement to be amended so that it conforms to the provisions of this Act.
- (2) Any agreement, arrangement or transaction that is not amended within the period specified in subsection (1) becomes invalid and unenforceable to the extent that it is inconsistent with the provisions of this Act.
- (3) Despite the provisions of this Act, a cheque which had been issued and presented for payment prior to the effective date may be processed and paid out or cleared within six months from that date, failing which payment on that cheque becomes invalid and may only be affected by means of cash or a payment instrument.

## 7. Act binds State

This Act binds the State.

## 8. Short title and commencement

- (1) This Act is called the Abolition of Payment by Cheque Act, 2022 and it comes into operation on a date determined by the Minister by notice in the *Gazette*.
- (2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

## Schedule (Section 5)

### Laws repealed or amended

#### 1. Insolvency Act, 1936 (Act [No. 24 of 1936](#))

The Insolvency Act, 1936 is amended—

- (a) in section 65, by the substitution for subsection (2) of the following subsection:
  - “(2) In connection with the production of any book or document in compliance with a summons issued under subsection (3) of section sixty-four or at

an interrogation of a person under subsection (1) of this section, the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law, shall apply: Provided that a banker at whose bank the insolvent in question or his or her spouse keeps or at any time kept an account, shall be obliged to produce, if summoned to do so under subsection (3) of section sixty-four, any payment instrument [cheque] in his possession which was used [drawn] by the insolvent or his or her spouse within one year before the sequestration of the insolvent's estate, or if any payment instrument [cheque] so used [drawn] is not available, then any record of the payment, date of payment and amount of that payment [cheque] which may be available to him, or a copy of such record and if called upon to do so, to give any other information available to him in connection with such payment [cheque] or the account of the insolvent or his or her spouse; and provided further that a person interrogated under subsection (1) shall not be entitled at such interrogation to refuse to answer any question upon the ground that the answer would tend to incriminate him.";

(b) in section 70—

(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) shall open a current account in the name of the estate with a banking institution within Namibia [the Republic], and shall deposit therein to the credit of the estate from time to time all sums received by him on behalf of the estate;”;

(ii) by the substitution for subsection (4) of the following subsection:

“(4) All payment instruments [cheques] or orders payable from or drawn upon any such account shall contain the name of the payee and the cause of payment and shall be made or drawn to order and, if required, shall be signed by every trustee or his duly authorized agent.”;

(c) in section 114, by the substitution for subsection (1) of the following subsection:

“(1) The trustee shall without delay lodge with the Master the receipts for dividends paid to creditors and if there is a contribution account the vouchers necessary to complete the account: Provided that a payment instrument [cheque] purporting to be [drawn] payable to a creditor in respect of any dividend due to him and paid by the banker on whom it is payable [drawn], may be accepted by the Master in lieu of any such receipt.”;

(d) in section 134, by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) a record of all payment instruments [cheques] used [drawn] during the period mentioned in paragraph (b) and the records of payment [counterfoils] of such payment instruments [cheques], if available, showing clearly, in the case of each payment instrument [cheque] and on each record of payment [counterfoil], the name of the payee, the amount of the payment instrument [cheque], and the date of the payment instrument [cheque].”; and

(e) in the Second Schedule, by the substitution for item 4 of Tariff B of the following item:

4. the gross proceeds of payment instruments **[cheques]** and postal orders payable to the insolvent, found in the estate \_\_\_\_\_ 1 per cent."

2. **Procedure and Evidence Proclamation, 1938 ([Proclamation No. 8 of 1938](#))**

The Procedure and Evidence Proclamation, 1938 is hereby repealed.

3. **Employees' Compensation Act, 1941 (Act [No. 30 of 1941](#))**

The Employees' Compensation Act, 1941 is amended in section 20 by the substitution for subsection (2) of the following subsection:

- "(2) (a) The Commission shall in respect of every such fund, open a banking **[current]** account with a banking institution in Namibia **[registered under section 4 of the Banks Act, 1965 (Act [No. 23 of 1965](#))]**, into which shall be deposited all moneys accruing to the fund concerned; and
- (b) no moneys shall be withdrawn or transferred from any such account except by means of payment instruments which, if required, shall be **[cheques]** approved or signed by the executive officer and one other employee of the Commission specially authorized thereto by the Commission, or by two such employees so authorized."

4. **Magistrates' Courts Act, 1944 (Act [No. 32 of 1944](#))**

The Magistrates' Courts Act, 1944 is amended in section 68 by the substitution for subsections (1) and (2) of the following subsections:

- "(1) The messenger executing any process of execution against movable property may, by virtue of such process, also seize and take any money or bank notes, and may seize, take and sell in execution payment instruments **[cheques]**, bills of exchange, promissory notes, bonds, or securities for money belonging to the execution debtor.
- (2) The messenger may also hold any payment instruments **[cheques]**, bills of exchange, promissory notes, bonds or securities for money which have been seized or taken, as security for the benefit of the execution creditor for the amount directed to be levied by the execution so far as it is still unsatisfied; and the execution creditor may, when the time of payment has arrived, sue in the name of the execution debtor, or in the name of any person in whose name the execution debtor might have sued, for the recovery of the sum secured or made payable thereby."

5. **The Apostolic Faith Mission of South Africa (Private) Act, 1961 (Act [No. 24 of 1961](#))**

The Apostolic Faith Mission of South Africa (Private) Act, 1961 is amended in the Schedule—

(a) by the substitution for paragraph 48 of the Articles of Association of the following paragraph:

- "48. All the property of the Mission, movable and immovable, shall be assigned, vested, registered, and transferred, all mortgages, pledges, hypothecations and securities made, taken, ceded and cancelled, Bank accounts operated upon, all payment instruments used **[cheques drawn]** and negotiable instruments made, signed, drawn, assigned and endorsed, all documents executed, all extracts from minutes certified, all legal proceedings taken, conducted and defended, and all transactions carried through, by one or more persons, authorised by

the Executive Council and in absence of such authorisation in the name of the President and the Vice-President, the Treasurer and the Secretary for the time being the Trustees and Executive officers of the Mission who shall however, at all times and in all things be subject to and act in accordance with the directions and instructions of the Executive Council, and a certificate under the hand of any two of the Trustees shall for all purposes be conclusive evidence that any person was or is an Officer or member of the Mission and with the right and powers or that any meeting whatever of the members of the Executive Council of the Mission has duly been held;" ;

- (b) by the substitution for paragraph 3 of the Memorandum of Association of the following paragraph:

"(q) To take, sign, use, draw and accept and endorse payment instruments **[cheques]**, bills of exchange, promissory notes, and negotiable instruments."

6. **Administration of Estates Act, 1965 (Act [No. 66 of 1965](#))**

The Administration of Estates Act, 1965 is amended—

- (a) in section 28—

- (i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) shall, unless the Master otherwise directs, as soon as he or she has in hand moneys in the estate in excess of the amount prescribed, open a banking **[cheque]** account in the name of the estate with a banking institution in Namibia and shall deposit therein the moneys which he or she has in hand and such other moneys as he or she may from time to time receive for the estate;" ; and

- (ii) by the substitution for subsection (4) of the following subsection:

"(4) All payment instruments **[cheques]** or orders payable from or drawn upon any such account shall contain the name of the payee and the cause of payment and shall be drawn to order and, if required, be signed by every executor or his duly authorized agent." ;

- (b) in section 35 by the substitution for subparagraph (i) of the proviso to subsection (12) of the following subparagraph:

"(i) a payment instrument **[cheque]** purporting to be **[drawn]** payable to a creditor or heir in respect of any claim or share due to him and paid by the banker on whom it is drawn;" ; and

- (c) in section 87 by the substitution for subsections (1) and (2) of the following subsections:

"(1) There shall be maintained at **[a]** any banking institution **[in the territory]** a banking **[cheque]** account in the name of the guardian's fund—

- (a) into which shall be deposited all amounts received by the Master which may or are required to be deposited in the guardian's fund in the terms of this Act; and

- (b) from which shall be paid all amounts which are, in terms of this Act, required to be paid out as the charge to the guardian's fund.
- (2) The Minister, after consultation with the Master and with the concurrence of the Minister responsible for finance, may by notice in the *Gazette* determine the governance framework for investment of moneys, in the banking [cheque] account referred to in subsection (1), which are not required for immediate use."

## 7. Usury Act, 1968 (Act [No. 73 of 1968](#))

The Usury Act, 1968 is amended—

- (a) in section 1, by the substitution for paragraph (a) of the definition of "ledger fee" of the following paragraph:
  - “(a) a banking institution **[as defined in section 1(1) of the Banks Act, 1965 (Act [No. 23 of 1965](#)),]** for keeping on behalf of a client a banking [cheque] account from which withdrawals may be made by such client by means of a payment instrument [cheque] which is eligible for clearing through the clearing house system of the clearing banks of Namibia [South Africa] and which is so charged whether the accounts show a debit balance or a credit balance;”;
- (b) in section 2, by the substitution for subsection (9) of the following subsection:
  - “(9) Save in respect of a debit balance in a banking [cheque] account with a banking institution in Namibia [as defined in section 1(1) of the Banks Act, 1965 (Act [No. 23 of 1965](#))], and subject to the provisions of sections 4, 5 and 5A, no person shall in respect of a money lending transaction or a credit transaction or a leasing transaction stipulate for, demand or receive from a borrower or credit receiver or lessee finance charges not disclosed in an instrument of debt.”;
- (c) in section 3, by the substitution for paragraph (c) of subsection (3) of the following paragraph:
  - “(c) a debit balance in a [n] banking account with a banking institution in Namibia, [as defined in section 1(1) of the Banks Act, 1965,] out of which withdrawals may be made by means of a payment instrument [cheque] or on other instructions of clients;” and
- (d) in section 10, by the substitution for paragraph (b) of subsection (5) of the following paragraph:
  - “(b) a debit balance in a [n] banking account with a banking institution **[as defined in the Banks Act, 1965 (Act [No. 23 of 1965](#))]**, from which withdrawals may be made by means of a payment instrument [cheque]”;

8. **Income Tax Act, 1981 (Act [No. 24 of 1981](#))**

The Income Tax Act, 1981 is amended—

(a) in section 44, by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of this section a person shall be deemed to be the agent of a shareholder referred to in section 42 and shall be deemed to have received a dividend on behalf of that shareholder if that person’s address appears in the share register of the company as the registered address of the shareholder and the dividend warrant or payment instrument **[cheque]** in payment of the dividend distributable to the shareholder is delivered at that address: Provided that any person so deemed to be the agent of any shareholder shall as regards such shareholder and in respect of any income received by or accruing to him or in his favour have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from Namibia.”;

(b) in section 47, by the substitution for subsection (2) of the following subsection:

“(2) The agent in Namibia by whom the tax is payable in terms of section 44(1) (b) shall, within thirty days of the date of delivery of the dividend warrant or payment instrument **[cheque]** in payment of the dividend at his address, or within such further period as may be approved by the Minister, pay the tax to the Minister and furnish him with a return showing the amount of the dividend and the name and address of the person to whom it has accrued.”; and

(c) in section 65, by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, **[cheque books,]** bank statements, deposit slips, **[paid cheques,]** payment instruments used to effect payments or records of such instruments, invoices, stock lists and all other books of account relating to any trade carried on by him and recording the details from which his returns for assessment of taxes under this Act or any previous income tax law were prepared;”.

9. **Close Corporations Act, 1988 (Act [No. 26 of 1988](#))**

The Close Corporations Act, 1988 is amended in section 23—

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) shall have that name (or such translation thereof) and registration number mentioned in legible characters in all notices and other official publications of the corporation, and in all bills of exchange, promissory notes, endorsements, payment instruments **[cheques]** and orders for money, goods or services purporting to be signed by or on behalf of the corporation, and all letters, delivery notes, invoices, receipts and letters of credit of the corporation;”;

(b) by the substitution for subsection (2) of the following subsection:

- “(2) If any member of, or any other person on behalf of, a corporation—
- (a) issues or authorizes the issue of any such notice or official publication of the corporation, or signs or authorizes to be signed on behalf of the corporation any such bill of exchange, promissory note, endorsement, payment instrument [cheque] or order for money, goods or services; or
  - (b) issues or authorizes the issue of any such letter, advertisement, delivery note, invoice, receipt or letter of credit of the corporation, without the name of the corporation, or such registered literal translation thereof, and its registration number being mentioned therein in accordance with subsection (1)(b), he shall be guilty of an offence, and shall further be liable to the holder of the bill of exchange, promissory note, payment instrument [cheque] or order for money, goods or services for the amount thereof, unless the amount is duly paid by the corporation.”.

10. **Agronomic Industry Act, 1992 (Act No. 20 of 1992)**

The Agronomic Industry Act, 1992 is amended in section 14 by the substitution for subsection (4) of the following subsection—

- “(4) No monies shall be withdrawn from a bank account of the Board except by means of a payment [cheque or other] instrument and, if required, signed by such members or employees of the Board as the Board may by resolution authorise, and every payment out of the funds of the Board shall be authorised by a prior resolution of the Board.”

11. **Stamp Duties Act No. 15 of 1993 (Act No. 15 of 1993)**

The Stamp Duties Act, 1993 is amended—

- (a) in section 1—
  - (i) by the deletion of the definition of the word "cheque"; and
  - (ii) by the substitution for paragraph (a) of the definition of "debit entry" of the following paragraph:

“(a) a bank account from which money is withdrawable by means of a payment instrument [cheque];”;
- (b) by the repeal of sections 34 and 35;
- (c) in Schedule 1—
  - (i) by the substitution for item 3 of the following item:

“3. Any bill of exchange [(other than a cheque)] or any promissory note, whether payable on demand or otherwise: for every N\$ [R]1 000 or part thereof of the amount or value”;

- (ii) by the substitution for sub-item (1) of item 4 of the following sub-item:

“(1) [**Cheque**] Banking account”; and

- (iii) by the substitution for paragraph (b) of the Exemptions to item 4 of the following paragraph:

“(b) a bill of exchange [**(other than a cheque)**] drawn by the holder of that account;”.

12. **Social Security Act, 1994 (Act [No. 34 of 1994](#))**

The Social Security Act, 1994 is amended in section 16 by the substitution for subsection (2) of the following subsection:

- “(2) (a) The Commission shall in respect of every such fund, open a banking [**current**] account with a banking institution in Namibia [**registered under section 4 of the Banks Act, 1965 (Act [23 of 1965](#))**], into which shall be deposited all moneys accruing to the fund concerned; and
- (b) no moneys shall be withdrawn or transferred from any such account except by means of a payment instrument which, if required, shall be [**cheques**] approved or signed by the executive officer and one other employee of the Commission specifically authorised thereto by the Commission, or by two such employees so authorized.”.

13. **Agricultural (Commercial) Land Reform Act, 1995 (Act [No. 6 of 1995](#))**

The Agricultural (Commercial) Land Reform Act, 1995 is amended in section 13C by the substitution for subsection (3) of the following subsection:

- “(3) The Commission shall open a banking [**current**] account with a banking institution in Namibia [**registered under the Banks Act, 1965 (Act [No. 23 of 1965](#))**], into which shall be deposited all moneys accruing to the Fund.”.

14. **Town and Regional Planners Act, 1996 (Act [No. 9 of 1996](#))**

The Town and Regional Planners Act, 1996 is amended in section 9 by the substitution for subparagraph (iii) of paragraph (f) of subsection (1) of the following subparagraph:

- “(iii) to deposit such funds or any part thereof in a banking [**current**] account with such a banking institution;”.

15. **Bank of Namibia Act, 1997 (Act [No. 15 of 1997](#))**

The Bank of Namibia Act, 1997 is amended in section 39 by the substitution for paragraph (a) of the following paragraph:

- “(a) organise facilities for the clearing and settlement of any payment instruments [**cheques and other**] for effecting payments, and establish such rules and procedures relating to clearing and settlement operations as may be appropriate;”.

16. **Liquor Act, 1998 (Act [No. 6 of 1998](#))**

The Liquor Act, 1998 is amended in section 54 by the substitution for subsection (2) of the following subsection:

- “(2) Subject to subsection (4), no person shall—
- (a) pay, or accept payment by way of—
    - [(i) **a post-dated cheque;**]
    - (ii) a bill or instrument payable at a future date; or
    - (iii) a pledge, bond, assignment, deposit or barter,for or in respect of any liquor supplied; or
  - (b) obtain or supply any liquor on credit;”.

17. **Long-term Insurance Act, 1998 (Act [No. 5 of 1998](#))**

The Long-term Insurance Act, 1998 is amended in Schedule 1 by the substitution for item 2 of the following item:

“2. A credit balance in a banking **[current or savings]** account with, or a deposit (including a negotiable deposit) accepted by, a banking institution in Namibia **[registered otherwise than provisionally in terms of the Banks Act, 1965 (Act [23 of 1965](#)),]** or a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act [No. 2 of 1986](#)), or money market instruments in terms of which such banking institution or building society is liable, including the paid-up shares of a building society or deposits in the Post Office Savings Bank.”.

18. **Short-term Insurance Act, 1998 (Act [No. 4 of 1998](#))**

The Short-term Insurance Act, 1998 is amended in Schedule 2 by the substitution for item 2 of the following item:

“2. A credit balance in a banking **[current or savings]** account with, or a deposit (including a negotiable deposit) accepted by, a banking institution in Namibia **[registered otherwise than provisionally in terms of the Banks Act, 1965 (Act [23 of 1965](#)),]** or a building society registered otherwise than provisionally in terms of the Building Societies Act, 1986 (Act [2 of 1986](#)), or money market instruments in terms of which such banking institution or building society is liable, including the paid-up shares of a building society or deposits in the Post Office Savings Bank.”.

19. **Namibia Film Commission Act, 2000 (Act [No. 6 of 2000](#))**

The Namibia Film Commission Act, 2000 is amended in section 15 by the substitution for paragraph (a) of subsection (4) of the following paragraph:

- “(a) by means of a payment instrument **[cheque]** or withdrawal slip, as the case may be, which, if required, must be signed or approved by the chairperson and one other member of the Commission specifically authorised thereto by the Commission or by two such members so authorised;”.

**20. Value-added Tax Act, 2000 (Act [No. 10 of 2000](#))**

The Value-added Tax Act, 2000 is amended in section 1—

- (a) by the substitution for paragraph (b) of the definition of "financial services" of the following paragraph:

“(b) transactions concerning money, deposit and banking **[current]** accounts, payments, transfers, debts (including the issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security), payment instruments **[cheques]** or negotiable instruments, other than debt collection or factoring;”;  
and

- (b) by the substitution for paragraph (b) of the definition of "debt security" of the following paragraph:

“(b) an obligation or liability to pay money, that is, or is to be, owing by any person **[but does not include a cheque]**”.

**21. Education Act, 2001 (Act [No. 16 of 2001](#))**

The Education Act, 2001 is amended in section 25—

- (a) by the substitution for paragraph (b) of subsection (5) of the following paragraph:

“(b) never be authorised to sign or approve the usage of payment instruments **[cheques]** or other **[form]** withdrawal**[s]** forms from the school development fund.”; and

- (b) by the substitution for subsection (6) of the following subsection:

“(6) Any withdrawal from the school fund account must be made by means of a payment instrument **[cheque]** or other withdrawal form co-signed by the school principal and the school board chairperson, or by any other two members of the school board specifically authorised by the school board.”.

**22. Bills of Exchange Act, 2003 (Act [No. 22 of 2003](#))**

The Bills of Exchange Act, 2003 is amended—

- (a) by the substitution for the long title of the following title—

“To provide for the form, interpretation, negotiation, and discharge of bills of exchange, **[cheques,]** promissory notes and other documents; to provide for the general rights and duties of holder and authority and liabilities of parties in relation to bills, **[cheques,]** promissory notes and other documents; and to provide for incidental matters.”;

- (b) in section 1, by the deletion of the definitions of "cheque" and "collecting bank";

- (c) by the repeal of section 42;

- (d) by the substitution for section 53 of the following section—

**“53.**

If a person signs a bill otherwise than as payer **[drawer]** or acceptor, signer of an aval **[or drawee certifying a cheque]**, he or she incurs the liabilities of an endorser to a holder in due course.”; and

- (e) in Chapter 2, where it appears for the second time in the Act—

- (i) by the repeal of PARTS I and II; and
- (ii) by the substitution for PART III of the following:

**“Part III – Unindorsed or irregularly indorsed instruments**

**81. Effect of payment to or crediting of accounts by bank of amounts of unendorsed or irregularly indorsed 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) a draft payable on demand drawn by such bank upon itself, or upon its agent which is a bank, whether payable at the head office or some other office of such bank or of its agent, it does not incur any liability by reason only of the absence of, or irregularity in, indorsement thereof, and such **[cheque,]** document or draft is discharged by the crediting of the account concerned or by such payment.

(2) **[Subsection (1) applies with necessary changes to any document which—**

(a) **was issued on behalf of the State;**

(b) **is drawn upon or addressed to a servant of the State (in this subsection 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 document were a**

**cheque and as if the drawee were a bank and the State its customer.]**

## **82. Rights of bank if unendorsed or irregularly endorsed document is delivered to it for collection**

- (1) If a **[cheque, or]** draft or other document referred to in section 81, which is payable to order, is delivered by the holder to a bank for collection, and such **[cheque,]** draft or document is not indorsed or was irregularly indorsed by such holder, such bank has such rights, if any, as it would have had if, upon such delivery, the holder had indorsed it in blank.
- (2) If a document **[cheque]** referred to in section 73 is delivered by the holder to a bank for collection and the holder is indebted to the bank, the bank is deemed to be the holder thereof taking the document **[cheque]** in pledge for such indebtedness with the same rights and subject to the same liabilities as the holder had.

## **83. Evidential value of payment of unendorsed or irregularly endorsed document**

If an unendorsed or irregularly endorsed **[cheque or]** draft or other document referred to in section 81, has been paid by the bank **[(including a drawee referred to in subsection (2) of that section)]** on which it is drawn, such payment is *prima facie* evidence of the receipt by the payee of the sum mentioned in such **[cheque,]** draft or document.

## **84. Negotiability of document referred to in sections 81, 82 and 83**

Nothing in section 81, [82](#) or [83](#) renders a non-negotiable document negotiable.";

- (f) by the substitution for the titles "Chapter 3" and "Chapter 4" of the titles "Chapter 5" and Chapter 6" respectively; and
- (g) by the repeal of section 96.

## **23. Combating of Domestic Violence Act, 2003 (Act [No. 4 of 2003](#))**

The Combating of Domestic Violence Act, 2003 is amended in section 14 by the substitution for paragraph (f) of subsection (2) of the following paragraph:

- “(f) a provision granting either party possession of specified personal property, including but not limited to means of transport, agricultural implements, livestock, furniture, tangible payment instruments, **[cheque books, credit cards,]** children’s clothing and toys, identification documents, keys, personal documents or other necessary personal effects, but, the order must not be made in respect of property which is not owned by either party or which is jointly owned by either party and another person;"

24. **Competition Act, 2003 (Act [No. 2 of 2003](#))**

The Competition Act, 2003 is amended in section 18 by the substitution for subsection (3) of the following subsection:

- “(3) Payment instruments **[Cheques]** payable **[drawn] from [on]** the Commission’s bank account, or any other form or document to be completed for the withdrawal, payment or transfer of money from any of the bank accounts of the Commission, must, if required, be signed on the Commission’s behalf by two persons authorised for that purpose by the Commission.”.

25. **Namibia Sports Act, 2003 (Act [No. 12 of 2003](#))**

The Namibia Sports Act, 2003 is amended in section 17 by the substitution for paragraph (c) of subsection (4) of the following paragraph:

- “(c) from which no money may be withdrawn, except by means of a payment **[cheque or other] instrument which, if required, must be** signed by such person or persons as may be authorised by the Commission.”.

26. **Teachers’ Education Colleges Act, 2003 (Act [No. 25 of 2003](#))**

The Teachers’ Education Colleges Act, 2003 is amended in section 36 by the substitution for paragraph (a) of subsection (4) of the following paragraph:

- “(a) must open and maintain a banking **[current]** account with a banking institution authorised to do business under the Banking Institutions Act, 1998 (Act [No. 2 of 1998](#)), into which must be deposited all moneys accruing to the college;”.

27. **Companies Act, 2004 (Act [No. 28 of 2004](#))**

The Companies Act, 2004 is amended—

- (a) in section 56—

- (i) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

- “(c) have its name and registration number mentioned in legible characters in all notices and other official publications of the company and in all bills of exchange, promissory notes, endorsements, payment instruments **[cheques,]** and orders for money or goods purporting to be signed by or on behalf of the company and in all letters, delivery notes, invoices, receipts, and letters of credit of the company.”;

- (ii) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

- “(b) issue or authorise the issue of any notice or other official publication of the company, or sign or authorise to be signed on behalf of the company any bill of exchange, promissory note, endorsement, payment instrument **[cheque]** or order for money or goods, wherein its name is not mentioned in the manner contemplated in subsection (1)(c);”;

(iii) by the substitution for subsection (5) of the following subsection:

“(5) A director, officer or person referred to in subsection (3) who contravenes that subsection is further liable to the holder of the bill of exchange, promissory note, payment instrument **[cheque]** or order for money or goods for the amount stated on the document if noncompliance with subsection (3) results in default of payment by the company.”;

(b) in section 173, by the substitution for subsection (2) of the following subsection—

“(2) For the purposes of subsection (1)—

- (a) an amount stated in any payment instrument **[cheque]** received by the company must not be taken to have been paid to and received by it until the amount of the payment instrument **[cheque]** has been unconditionally credited to its account with its bankers; and
- (b) any amount paid to and received by the company must be reduced by the amount of any money, bill, promissory note or payment instrument **[cheque]** which it has at any time delivered to the payer otherwise than in discharge of a genuine debt due to that payer by the company.”;

(c) in section 400—

(i) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) must, with a banking institution registered under the Banking Institutions Act, 1998 (Act [No. 2 of 1998](#)), within Namibia, open a banking **[current]** account from which amounts are withdrawable by means of a payment instrument **[cheque]** in the name of the company in liquidation, and must, from time to time, deposit into that account to the credit of the company all moneys received by him or her on its behalf;”;

(ii) by the substitution for subsection (4) of the following subsection:

“(4) All payment instruments **[cheques]** or orders payable from or drawn on any account opened under this section must contain the name of the payee and the cause of payment and must be drawn to order and, if required, be signed by the liquidator or his or her duly authorised agent.”;

(d) in section 421, by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs:

- “(a) any payment instrument **[cheque]** in his or her possession which was used **[drawn]** by the company within one year before the commencement of the winding-up; or
- (b) if any payment instrument **[cheque]** so used **[drawn]** is not available, any record of the payment, the date of payment and the amount of the payment

instrument [cheque] which may be available to him or her, or a copy of the record, and must, if called upon to do so, give any other information available to him or her in connection with that payment instrument [cheque] or the account of the company.";

(e) in Schedule 1—

(i) by the substitution for items 89 and 90 of Table A of the following items:

“89. Every dividend or other moneys payable in cash in respect of shares may be paid by means of a payment instrument [cheque], warrant, coupon or otherwise as the directors may from time to time determine, and shall, if paid otherwise than by coupon, either be sent by post to the registered address of the member entitled thereto or be given to him or her personally, and the receipt or endorsement on the payment instrument [cheque] or warrant of the person whose name appears in the register as the shareholder, or his or her duly authorised agent, or the surrender of any coupon shall be a good discharge to the company in respect thereof. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

90. The company shall not be responsible for the loss in transmission of any payment instrument [cheque], warrant, coupon or other document sent through the post to the registered address of any member, whether or not it was so sent at his or her request.";

(ii) by the substitution for items 88 and 89 of Table B of the following items:

“88. Every dividend or other moneys payable in cash in respect of shares may be paid by means of a payment instrument [cheque], warrant, coupon or otherwise as the directors may from time to time determine, and shall, if paid otherwise than by coupon, either be sent by post to the registered address of the member entitled thereto or be given to him or her personally, and the receipt or endorsement on the payment instrument [cheque] or warrant of the person whose name appears in the register as the shareholder, or his or her duly authorised agent, or the surrender of any coupon shall be a good discharge to the company in respect thereof. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by them as joint holders.

89. The company shall not be responsible for the loss in transmission of any payment instrument [cheque], warrant, coupon, or other document sent through the post to the registered address of any member, whether or not it was so sent at his or her request.".

## 28. National Heritage Act, 2004 (Act [No. 27 of 2004](#))

The National Heritage Act, 2004 is amended in section 20 by the substitution for subsection (3) of the following subsection:

“(3) Payment instruments [Cheques] or orders payable from or drawn on the Council’s bank account must, if required, be signed on its behalf by two persons authorised for that purpose by resolution of the Council.".

29. **Accreditation Board of Namibia Act, 2005 (Act [No. 8 of 2005](#))**

The Accreditation Board of Namibia Act, 2005 is amended in section 16 by the substitution for subparagraph (iii) of paragraph (b) of subsection (8) of the following subparagraph:

- “(iii) the signing and endorsing of payment instruments **[cheques]** and other negotiable instruments relating to, such bank account or bank accounts.”.

30. **Standards Act, 2005 (Act [No. 18 of 2005](#))**

The Standards Act, 2005 is amended in section 18 by the substitution for subparagraph (iii) of paragraph (b) of subsection (8) of the following subparagraph:

- “(iii) the signing and endorsing of payment instruments **[cheques]** and other negotiable instruments relating to, such bank account or bank accounts.”.

31. **Labour Act, 2007 (Act [No. 11 of 2007](#))**

The Labour Act, 2007 is amended in section 11—

- (a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs:

- “(b) in cash, or, at the employee’s option, by means of a payment instrument **[cheque]**, and the payment must be either—
- (i) to the employee; or
  - (ii) by direct deposit into an account designated in writing by that employee; and
- (c) in a sealed envelope, if payment is in cash or by a payment instrument, if the instrument is in documentary form **[cheque]**.”; and

- (b) by the substitution for subparagraph (i) of paragraph (a) of subsection (3) of the following subparagraph:

- “(i) must accompany the payment, if payment is in cash or by a payment instrument, if the instrument is in documentary form **[cheque]**.”.

32. **Veterans Act, 2008 (Act [No. 2 of 2008](#))**

The Veterans Act, 2008 is amended in section 8 by the substitution for subsection (3) of the following subsection:

- “(3) Payment instruments **[Cheques]** payable from **[drawn on]** the Fund’s bank account, or any other form or document to be completed for the withdrawal, payment or transfer of money from any of the bank accounts of the Fund, must, if required, be signed on the Fund’s behalf by such persons as are authorised for that purpose by the Board.”.

33. **National Youth Council Act, 2009 (Act [No. 3 of 2009](#))**

The National Youth Council Act, 2009 is amended in section 30 by the substitution for paragraph (c) of subsection (5) of the following paragraph:

- “(c) from which no money may be withdrawn, except by means of a payment **[cheque or other]** instrument which, if required, must be signed by such person or persons as may be authorised by the Board.”.

34. **Financial Intelligence Act, 2012 (Act [No. 13 of 2012](#))**

The Financial Intelligence Act, 2012 is amended in section 1 by the deletion of paragraph (c) of the definition of "cash".

35. **Public Procurement Act, 2015 (Act [No. 15 of 2015](#))**

The Public Procurement Act, 2015 is amended in section 21 by the substitution for subsection (3) of the following subsection:

- “(3) Payment instruments **[Cheques]** payable from or drawn on the bank account of the Board, or any other form or document to be completed for the withdrawal, payment or transfer of money from any of the bank accounts of the Board~~],~~ are, if required, signed on behalf of the Board by two persons authorised for that purpose by the Board.”.

36. **Civil Aviation Act, 2016 (Act [No. 6 of 2016](#))**

The Civil Aviation Act, 2016 is amended in section 26 by the substitution for subsection (3) of the following subsection—

- “(3) Payment instruments **[Cheques]** payable from or drawn on a bank account of the Authority, or any other form or document to be completed for the withdrawal, payment or transfer of money from any of the bank accounts of the Authority are, if required, signed by two persons authorised for that purpose by the Board.”.