



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GOVERNMENT NOTICE

No. 264	Promulgation of Bills of Exchange Act, 2003 (Act No. 22 of 2003), of the Parliament	1
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Government Notice

OFFICE OF THE PRIME MINISTER

No. 264

2003

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 22 of 2003: Bills of Exchange Act, 2003.

ACT

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.

(Signed by the President on 21 December 2003)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

ARRANGEMENT OF ACT CHAPTER 1 DEFINITIONS

1. Definitions

CHAPTER 2 BILLS OF EXCHANGE PART I FORM AND INTERPRETATION

2. Definition of and requirements for bill of exchange
3. Effect if different parties to bill are same person or drawee fictitious or non-existing person or not having contractual capacity
4. Requirements as to drawee
5. Requirements as to payee
6. Negotiability of bill
7. Sum payable
8. When bill is payable on demand
9. When future time is determinable
10. Omission of date in bill payable after date
11. Presumption as to correctness of date and antedating and post-dating and date of non-business day
12. Computation of time of payment
13. Optional stipulations by drawer or indorser
14. Definition and requisites of acceptance
15. Time for acceptance
16. General and qualified acceptances
17. Inchoate instruments
18. Delivery as requirement for contract on bill

PART II CAPACITY AND AUTHORITY OF PARTIES

19. Capacity of parties
20. Signature as requirement for liability
21. Forged and unauthorised signatures
22. Signature as agent or in representative capacity

PART III CONSIDERATION FOR BILL

23. Holder for value
24. Accommodation bill or party
25. Holder in due course
26. Presumption as to value and good faith

PART IV
NEGOTIATION OF BILL

27. Negotiation of bill
28. Manner of indorsing
29. Indorsement in blank and specific indorsement
30. Restrictive indorsement
31. Conditional indorsement
32. Continuance of negotiability, and negotiation of overdue or dishonoured bill
33. Negotiation of bill to party already liable on bill
34. Rights and powers of holder

PART V
GENERAL DUTIES OF HOLDER

35. When presentment for acceptance is necessary and delay in presentment
36. Time for presenting for acceptance of bill payable after sight
37. Rules as to presentment for acceptance and excuses for non-presentment
38. Failure to accept within customary time
39. When bill is dishonoured by non-acceptance and consequences thereof
40. Duties as to and consequences of qualified acceptance
41. Rules as to presentment for payment
42. Presentment for payment by bank
43. When presentment for payment may be delayed or dispensed with
44. When bill is dishonoured by non-payment and consequences thereof
45. Notice of dishonour and effect of failure to give notice
46. Rules as to notice of dishonour
47. When notice of dishonour may be delayed or dispensed with
48. Protest of bill and consequences of failure to protest
49. Duties of holder towards acceptor as regards presentment for payment, protest and notice of dishonour, and towards payer on payment of bill

PART VI
LIABILITIES OF PARTIES

50. Liability of drawee
51. Liability of acceptor
52. Liability of drawer and of indorser
53. Liability of stranger signing bill
54. Liability of signer of aval
55. Damages recoverable from parties to dishonoured bill
56. Liability of transferor by delivery

PART VII
DISCHARGE OF BILL

57. Discharge by payment in due course
58. Bank paying demand draft where indorsement is forged
59. Discharge by acceptor becoming holder
60. Discharge by waiver
61. Discharge by cancellation of bill and discharge of party by cancellation of his or her signature
62. Effect of alteration of bill or acceptance

PART VIII
LOST OR DESTROYED BILL OR NOTE

63. Holder's rights if bill or note is lost or destroyed
64. Action upon lost bill or note

PART IX
BILL IN SET

65. Rules as to bill in set

PART X
CONFLICT OF LAWS

66. Rules if laws conflict

CHAPTER 3
CHEQUES
PART I
CHEQUES-GENERALLY

67. Applicability to cheques of certain provisions relating to certain other bills
68. Presentment of cheque for payment
69. Liability of drawee who has certified cheque
70. Prevention of fraud
71. Revocation of bank's authority

PART II
CROSSED CHEQUES

72. General and specific crossings on cheques
73. Non-transferable cheques
74. Crossing by drawer or after issue
75. Crossing material part of cheque
76. Duties of bank as to crossed cheques
77. Protection to bank and drawer where cheque is crossed
78. Effect of crossing and addition of words "not negotiable" on rights of holder
79. True owner of stolen or lost crossed cheque marked "not negotiable" entitled to compensation from certain subsequent possessors
80. Application of sections 72 to 79 to certain documents other than cheques

CHAPTER 4
UNINDORSED OR IRREGULARLY INDORSED INSTRUMENTS

81. Effect of payment to or crediting of accounts by bank of amounts of unindorsed or irregularly indorsed cheques and certain other documents
82. Rights of bank if unindorsed or irregularly indorsed cheque or certain other document is delivered to it for collection
83. Evidential value of payment of unindorsed or irregularly indorsed cheque or certain other document
84. Negotiability of documents referred to in sections 81, 82 and 83

CHAPTER 5
PROMISSORY NOTES

85. Promissory note defined
86. Delivery requirement for coming into existence of note
87. Joint or joint and several liability on note
88. Time of presentment for payment of note payable on demand and indorsed
89. Presentment of note for payment
90. Liability of maker
91. Application to notes of provisions relating to bills

CHAPTER 6
GENERAL PROVISIONS

92. Good faith
93. Signature
94. Computation of time
95. Protest when service of notary cannot be obtained
96. Certain provisions of Act applicable to dividend warrant, coupon for interest and postal and money orders
97. Laws that are not affected by this Act
98. Savings and transitional provisions
99. Repeal of laws
100. Short title

SCHEDULE 1
CERTIFICATE OF ATTESTATION OF DISHONOUR
OF BILL WHEN NOTARY IS NOT AVAILABLE

SCHEDULE 2
LAWS REPEALED

CHAPTER 1

DEFINITIONS

Definitions

1. In this Act, unless the context otherwise indicates -

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

“bank” means a body of persons, whether incorporated or not, that carries on the business of banking, and includes the Bank of Namibia referred to in section 2 of the Bank of Namibia Act, 1997 (Act No. 15 of 1997), a banking institution defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998), and the Post Office Savings Bank as defined in section 1 of the Posts and Telecommunications Act, 1992 (Act No. 19 of 1992);

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

“bill” means a bill of exchange as defined in section 2;

“cheque” means a bill drawn on a bank payable on demand;

“collecting bank” means a bank collecting payment of a cheque or other document contemplated in section 81;

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

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

“indorsement” means an indorsement completed by delivery;

“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 Sunday or a public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1990 (Act No. 26 of 1990);

“note” means a promissory note as defined in section 85;

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

CHAPTER 2

BILLS OF EXCHANGE

PART I

FORM AND INTERPRETATION

Definition of and requirements for bill of exchange

2. (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 addressee to pay on demand, or at a fixed or determinable future time, a sum certain in money to a specified person or his or her 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 herself, 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 that subsection.

(4) A bill is not invalid by reason -

- (a) that it is not dated; or
- (b) that it does not specify -
 - (i) the value given;
 - (ii) that any value has been given for the bill; or
 - (iii) where it is drawn or payable.

Effect if different parties to bill are same person or drawee fictitious or non-existing person or not having contractual capacity

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

(2) If in a bill, drawer and drawee are the same person, or the drawee is a fictitious or non-existing person or a person not having contractual capacity, the holder may treat the instrument as a bill or note.

Requirements as to drawee

4. (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.

Requirements as to payee

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

(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 contractual capacity, the bill may be treated as payable to bearer.

Negotiability of bills

6. (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".

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

Sum payable

7. (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 installments;

(c) by stated installments 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.

When bill is payable on demand

8. (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 in the bill.

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

When future time is determinable

9. (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 that 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 that may or may not happen, is not a bill and the happening of the event does not cure the defect.

Omission of date in bill payable after date

10. 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 in the bill the true date of issue or acceptance, and the bill is payable accordingly, but -

(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 later comes into the hands of a holder in due course,

the bill operates and is payable as if the date so inserted had been the true date.

Presumption as to correctness of date and ante-dating and post-dating and date of non-business day

11. (1) If a bill, or the acceptance of or any indorsement on a bill, is dated, the date, unless the contrary is proved, is 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 ante-dated or post-dated, or that it bears the date of a non-business day.

Computation of time of payment

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

- (a) if the date on which the bill would fall due is a non-business day, the due date of the bill is 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 -
 - (i) the acceptance, if the bill is accepted; and
 - (ii) noting or protest, if the bill is noted or protested for non-acceptance.

Optional stipulations by drawer or indorser

13. The drawer and any indorser of a bill may insert in the bill an express stipulation -

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

Definition and requisites of acceptance

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

- (2) An acceptance is invalid, unless -
 - (a) it is written on the bill and is signed by the drawee whose mere signature without additional words is sufficient; and
 - (b) it stipulates that the drawee will perform his or her promise by payment of money other than by any other means.

Time for acceptance

- 15. (1) A bill may be accepted -
 - (a) before it has been signed by the drawer, or while otherwise incomplete; or
 - (b) when it is overdue; or
 - (c) 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 later accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as from the date of first presentment for acceptance to the drawee.

General and qualified acceptances

16. (1) An acceptance may be -

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

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

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

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

(5) In particular an acceptance is qualified, if it -

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

Inchoate instruments

17. (1) If a person places his or her 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 such person's signature for that of the drawer, the acceptor or an indorser.

(2) If a bill lacks any material particular, the person in possession of it has a *prima facie* authority to fill up any omission in the bill in any way he or she thinks fit.

(3) An instrument referred to in subsection (1) or (2), if -

- (a) completed, may be enforceable against any person who became a party thereto before its completion, if it is filled up -
 - (i) within the time agreed on; or
 - (ii) within a reasonable time, if no time is agreed on,

and strictly in accordance with the authority given; or

- (b) after completion, is negotiated to a holder in due course, it is valid for all purposes in his or her hands, and he or she 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)(a)(ii), the question what a reasonable time is, is a question of fact.

Delivery as requirement for contract on bill

18. (1) A contract on a bill, whether it be a drawer's, the acceptor's, or an indorser's, or that of the signer of an aval, is not complete and irrevocable until delivery of the instrument.

(2) 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 -

- (a) gives notice to the person entitled to the bill that he or she has accepted or signed it; or
- (b) according to the directions of the person entitled to the bill, has accepted or signed it,

the acceptance or aval becomes complete and irrevocable.

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

- (a) 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 specific purpose only, and not for the purpose of transferring the ownership in the bill.

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

(5) 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 or her is presumed until the contrary is proved.

PART II

CAPACITY AND AUTHORITY OF PARTIES

Capacity of parties

19. (1) Capacity to incur liability as a party to a bill is co-extensive with contractual capacity.

(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 payment against any other party to the bill.

Signature as requirement for liability

20. (1) A person is not liable as drawer, acceptor or indorser of a bill if he or she has not signed it as such drawer, acceptor or indorser.

(2) If a person signs a bill in a trade or assumed name -

- (a) he or she is liable on the bill as if he or she had signed it in his or her 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.

Forged and unauthorised signatures

21. (1) Subject to this Act, if a signature on a bill is forged or placed on the bill without the authority of the person whose signature it purports to be -

- (a) the forged or unauthorised signature is wholly inoperative; and
- (b) no right to retain or to discharge the bill or to enforce payment of the bill against any party to the bill 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 lack of authority.

(2) Nothing in this section affects the ratification of an unauthorised signature not amounting to forgery.

Signature as agent or in representative capacity

22. (1) If a person signs a bill -

- (a) as drawer, acceptor or indorser and adds words to his or her signature indicating that he or she signs for or on behalf of a principal, or in a representative capacity; or
- (b) as drawer and the name of the principal appears with his or her signature,

he or she is not personally liable on the bill.

(2) If a person referred to in subsection (1)(a) had in fact no authority to sign for or on behalf of the person indicated as principal

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

PART III

CONSIDERATION FOR BILL

Holder for value

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

Accommodation bill or party

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

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

Holder in due course

25. (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, but he or she must have -

- (a) become the holder of it before it was overdue, and if it had previously been dishonoured, without notice of the dishonour; and
 - (b) taken the bill in good faith and for value, and at the time the bill was negotiated to him or her, he or she must have had no notice of any defect in the title of the person who negotiated the bill.
- (2) In particular the title of a person who negotiates a bill -
- (a) is defective, if he or she obtained the bill, or the acceptance of the bill, by fraud or other unlawful means, or for an illegal consideration; and
 - (b) is deemed to have been defective, if he or she 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 or her title to a bill through a holder in due course, and who is not himself or herself a party to any fraud or illegality affecting it, has all the rights of the holder in due course as regards the acceptor and all parties to the bill before that holder.

Presumption as to value and good faith

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

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

PART IV**NEGOTIATION OF BILL****Negotiation of bill**

27. (1) A bill is negotiated if it is transferred from one person to another in such a manner as to make 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 or her order transfers it without indorsing it, the transfer gives the transferee -

- (a) such title as the transferor had in the bill; and
 - (b) the right to have the bill indorsed by the transferor.
- (5) If any person is under obligation to indorse a bill in a representative capacity,

he or she may indorse the bill in such terms as to negative personal liability.

Manner of indorsing

28. (1) An indorsement to effect a negotiation of a bill, must -

- (a) be written on the bill;
- (b) be signed by the indorser; and
- (c) be an indorsement of the entire bill.

(2) 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 recognised is deemed to be written on the bill.

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

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

(5) If a bill is payable to the order of two or more payees or endorsees 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.

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

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

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

Indorsement in blank and specific indorsement

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

(2) A specific 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 changes to an indorsee under a specific indorsement.

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

Restrictive indorsement

30. (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 directed, and

not a transfer of the ownership of the bill, 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 -
- (a) the right to receive payment of the bill, and to sue any party to the bill that his or her indorser could have sued;
 - (b) no power to transfer his or her rights as indorsee, unless it expressly authorises him or her to do so.

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

Conditional indorsement

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

Continuance of negotiability, and negotiation of overdue or dishonoured bill

32. (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 or she took it had.

(3) A bill payable on demand is deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time within the meaning of subsection (4).

(4) The question what an unreasonable length of time for the purpose of subsection (3) is, is a question of fact.

(5) 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.

(6) 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 to the bill at the time of dishonour, but nothing in this subsection affects the rights of a holder in due course.

Negotiation of bill to party already liable on bill

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

Rights and powers of holder

34. The holder of a bill -
- (a) may sue on the bill in his or her own name;
 - (b) who is a holder in due course -
 - (i) 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
 - (ii) may enforce payment against all parties liable on the bill;
 - (c) who holds the bill with a defective title and -
 - (i) negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; or
 - (ii) obtains payment of the bill in due course the person who made such payment gets a valid discharge of the bill.

PART V

GENERAL DUTIES OF HOLDER

When presentment for acceptance is necessary and delay in such presentment

35. (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 must 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 endorsers.

Time for presenting for acceptance of bill payable after sight

36. (1) Subject to 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 (3).

(2) If the holder of a bill payable after sight does not comply with subsection (1), the drawer and all endorsers before that holder are discharged.

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

Rules as to presentment for acceptance and excuses for non-presentment

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

- (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 authorised to accept or refuse acceptance on the drawee's 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 or her only;
- (c) if the drawee is dead, presentment may be made to his or her executor;
- (d) if the drawee is insolvent, presentment may be made to him or her or his or her trustee;
- (e) a presentment by post, if in due course, is sufficient.

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

- (a) the drawee is dead or insolvent, or is a fictitious or non-existing person or a person not having contractual capacity;
- (b) after the exercise of reasonable diligence, the presentment cannot be effected; or
- (c) 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.

Failure to accept within customary time

38. If a bill is duly presented for acceptance and it is not accepted within the customary time -

- (a) the person presenting the bill must treat the bill as dishonoured by non-acceptance; and
- (b) the holder loses his or her right of recourse against the drawer and indorsers, if the person presenting it does not treat it as dishonoured by non-acceptance.

When bill is dishonoured by non-acceptance and consequences thereof

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

- (a) it is duly presented for acceptance and acceptance is refused or cannot be obtained; or
- (b) presentment for acceptance is excused and the bill is not accepted.

(2) Subject to 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.

Duties as to and consequences of qualified acceptance

40. (1) The holder of a bill may refuse to take a qualified acceptance, and, if he or she does not obtain an unqualified acceptance, he or she 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 authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, the drawer or such indorser is discharged from his or her liability on the bill, but this subsection does not apply to a partial acceptance of which 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 or her dissent to the holder, he or she is deemed to have assented to the qualified acceptance.

Rules as to presentment for payment

41. (1) Subject to this Act, a bill must be duly presented for payment in accordance with subsection (2), and, if it is not so presented the drawer and indorsers are discharged.

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

- (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 this Act, be made within a reasonable time, within the meaning of subsection (3), after its issue, to render the drawer liable, and within such a reasonable time after its endorsement, to render the indorser liable;
- (c) presentment, subject to subsection (5), must be made -
 - (i) by the holder, or by some person authorised to receive payment on his or her behalf;
 - (ii) at a reasonable hour on a business day, at the proper place within the meaning of subsection (4); and
 - (iii) either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his or her 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; and
- (e) if the drawee or acceptor of the bill is dead and no place of payment is specified, presentment must be made to his or her executor, if there is one and, with the exercise of reasonable diligence, he or she can be found.

(3) In determining what is a reasonable time for the purposes of subsection (2)(b), regard must 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 or her 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 or her last known place of business or residence.
- (5) A presentment by post, if in due course, is sufficient.

Presentment for payment by bank

42. (1) Subject to subsection (1), (2)(a) and (b), and (3) of section 41, a cheque may 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 subsection (1)(c), a cheque is deemed to be identified with reasonable certainty, if the following are specified or are readily ascertainable by the drawee bank from the data transmitted by or on behalf of the collecting bank -

- (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.

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

When presentment for payment may be delayed or dispensed with

43. (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 or her default, misconduct or negligence, but, 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 or non-existing person;
- (c) as regards the drawer, if the drawee or acceptor is not bound, as between him or herself 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 the indorser has no reason to expect that the bill will be paid if presented;
- (e) by express or implied waiver of presentment; or
- (f) if the drawee or acceptor is insolvent.

(3) Subject to 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.

When bill is dishonoured by non-payment and consequences thereof

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

Notice of dishonour and effect of failure to give such notice

45. Subject to 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, but -

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

Rules as to notice of dishonour

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

- (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 or herself liable on the bill;
- (b) the notice may be given by an agent, either in his or her own name or in the name of, any party entitled to give notice, whether that party is his or her 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 state 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 herself or to a person authorised to receive such notice on his or her 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, can be found;
 - (h) if the drawer or an indorser is insolvent, notice may be given either to him or herself, or to his or her 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 is 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 or she may give notice either to the parties liable on the bill or to his or her principal, and if he or she gives notice to his or her principal, he or she must do so within the same period of time that would have been allowed if he or she were the holder.
- (2) If the notice is given by or on behalf of the holder, it operates to 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 subsection (1), it operates to the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (4) An incorrect description of the bill in the notice does not invalidate the notice, unless the party to whom the notice is given is, in fact, misled by such description.
- (5) In the absence of special circumstances, it is deemed that notice is not given within a reasonable time for the purposes of subsection (1)(j), 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 the business day referred to in paragraph (a) is a Saturday, on the business day next after that Saturday.
- (6) Upon receipt of notice contemplated in subsection (1)(k), a principal has himself or herself the same period of time for giving notice that he or she would have had if the agent had been an independent holder.
- (7) If a party to a bill receives due notice of dishonour, he or she, after receipt of such notice, has 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 or courier.

When notice of dishonour may be delayed or dispensed with

47. (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 or her default, misconduct, or negligence, but, 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 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 -
 - (i) where the drawer and drawee are the same person;
 - (ii) where the drawee is a fictitious or non-existing person or a person not having contractual capacity;
 - (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 or herself and the drawer, to accept or pay the bill; or
 - (v) where the drawer has countermanded payment;
- (d) as regards an indorser in the following cases -
 - (i) where the drawee is a fictitious or non-existing person or a person not having contractual capacity, and such indorser was aware of that fact at the time he or she indorsed the bill;
 - (ii) where such indorser is the person to whom the bill is presented for payment; or
 - (iii) where the bill was accepted or made for the accommodation of such indorser.

Protest of bill and consequences of failure to protest

48. (1) 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 is not necessary so to protest any such bill to hold the drawer or any indorser liable.

(2) 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.

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

(4) Subject to 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.

(5) If it is intended to protest a bill in terms of subsection (7)(a), 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.

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

(7) A bill must be protested at the place where it is dishonoured, but -

- (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; or
- (b) a bill protested as is contemplated in subsection (2) must be protested at the place where it is expressed to be payable.

(8) 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 reason for protesting the bill; and
- (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.

(9) 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 of the bill.

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

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

49. (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 section 42, when a holder of a bill presents it for payment, he or she must exhibit the bill to the person from whom he or she demands payment, and when a bill is paid, the holder must forthwith deliver it up to the party paying it.

PART VI

LIABILITIES OF PARTIES

Liability of drawee

50. 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.

Liability of acceptor

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

Liability of drawer and indorser

52. The drawer of a bill, by drawing it -
- (a) engages that, on due presentment -
 - (i) it must be accepted and paid according to its tenor; and
 - (ii) if it is dishonoured he or she will compensate the holder, or an indorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken; and
 - (b) is precluded from denying to a holder in due course the existence of the payee and the payee's then capacity to indorse.
- (2) The indorser of a bill, by indorsing it -
- (a) engages that, on due presentment -
 - (i) it must be accepted and paid according to its tenor; and
 - (ii) if it is dishonoured he or she will compensate the holder, or a subsequent indorser who is compelled to pay it, if 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 or her immediate endorsee or a subsequent indorsee that the bill was at the time of his or her indorsement a valid bill, and that he or she had then a good title to the bill.

Liability of stranger signing bill

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

Liability of signer of aval

54. (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 if he or she signs the bill or note, and by words such as "as aval", "as surety" or "as guarantor" expressly indicates that he or she is a surety, and 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 is sufficient for such indication.

(3) The signer of an aval may specify in the bill or note the party for whom he or she has given his or her aval, and if he or she does not so specify, he or she is deemed to have given his or her aval for the drawer or maker, as the case may be, but, if the bill has been accepted, whether before or after the signing of the aval, the signer of that aval is deemed to have given his or her 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 or she has given his or her aval or is deemed to have given his or her aval.

(5) If the signer of an aval pays the bill or note, he or she acquires the rights arising out of the bill or note against the person for whom he or she has given his or her aval or is deemed to have given his or her aval and against all parties liable to that person.

Damages recoverable from parties to dishonoured bill

55. (1) If a bill is dishonoured -

- (a) the holder may recover damages from any party liable on the bill;
- (b) the drawer, if he or she has been compelled to pay the bill, may recover damages from the acceptor; or
- (c) an indorser who has been compelled to pay the bill, may recover damages from the acceptor, the drawer or a prior indorser.

(2) The damages referred to in subsection (1) is deemed to be the liquidated amount of the bill, plus interest on that amount 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, until the date of payment.

Liability of transferor by delivery

56. (1) If the holder of a bill payable to bearer negotiates such bill by delivery without indorsing it, he or she is called a transferor by delivery, and is not liable on the bill.

(2) A transferor by delivery who negotiates a bill warrants to his or her immediate transferee, if the latter is a holder for value, that -

- (a) the bill is what it purports to be;
- (b) he or she has a right to transfer it; and
- (c) at the time of transfer, he or she is not aware of any fact which renders the bill valueless.

PART VII

DISCHARGE OF BILL

Discharge by payment in due course

57. (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 was made by or on behalf of the drawee or acceptor.

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

(3) If the drawer pays a bill payable to a third party or the order of the latter, the drawer may enforce payment of the bill 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 or her former rights as regards the acceptor and prior parties, and he or she, if he or she thinks fit, may strike out his or her 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.

Bank paying demand draft where indorsement is forged

58. 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 -

- (a) it is not obligatory 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
- (b) the bank is deemed to have paid the bill in due course, although the indorsement of the payee or any subsequent indorsement has been forged or made without authority, but, only if such indorsement does not purport to be that of a person who is a customer of the bank at the branch on which the bill is drawn.

Discharge by acceptor becoming holder

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

Discharge by waiver

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

(2) The waiver 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 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 affects the rights of a holder in due course who had no notice of the waiver.

Discharge by cancellation of bill and discharge of party by cancellation of his or her signature

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

(2) If the holder or his or her agent intentionally cancelled the signature of any party liable on the bill -

(a) the party is discharged; and

(b) any indorser who would have had a right of recourse against the party is discharged.

(3) A cancellation of a bill or any signature on the bill made unintentionally or under a mistake or without the authority of the holder is inoperative.

(4) If a bill or any signature on the bill 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.

Effect of alteration of bill or acceptance

62. (1) If a bill or an acceptance is materially altered -

(a) 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; and

(b) any party who has himself or herself made, authorised 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.

PART VIII

LOST OR DESTROYED BILL OR NOTE

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

63. (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 or her another bill or note of the same tenor, and must give adequate security to the drawer or maker, if required, to indemnify the drawer or maker against all persons in case the bill or note alleged to have been lost or destroyed is found again.

(2) If the drawer or maker is requested to give another bill or note in terms of subsection (1) but refuses to give such bill or note, he or she may be compelled to do so.

Action upon lost bill or note

64. 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 bill or note may not be set up by way of defence, but an indemnity must be given to the satisfaction of the court against the claims of any other person upon the bill or note.

PART IX

BILL IN SET

Rules as to bill in set

65. (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 or she is liable on every such part, and every indorser after him or her is liable on the part he or she has himself or herself indorsed, as if the 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, as between such holders, is deemed to be the true owner of the bill, but nothing in this subsection affects the rights of a person who in due course accepts or pays the part first presented to him or her.

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

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

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

(7) Subject to this section, if any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

PART X

CONFLICT OF LAWS

Rules if laws conflict

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

- (a) the validity of the bill as regards requisites in form is determined by the law of the place of issue;
- (b) the validity, as regards requisites in form, of every supervening contract, such as acceptance, indorsement or signer of an aval, is determined by the law of the place where such contract was made, but -
 - (i) a bill issued outside Namibia 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 Namibia which conforms, as regards requisites in form, to the law of Namibia, and for purposes of enforcing payment, may be treated as valid as between all persons who negotiate, hold or become parties to it in Namibia;
- (c) subject to 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, but, if a bill payable in Namibia is indorsed outside Namibia, the indorsement as regards the payer must be interpreted according to the law of Namibia;
- (d) 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;
- (e) if a bill is drawn outside but payable in Namibia, and the sum payable is not expressed in currency of Namibia, the amount, in the absence of an express stipulation to the contrary, must be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable; and
- (f) if a bill is drawn in one country and is payable in another, the due date of the bill is determined according to the law of the place where it is payable.

CHAPTER 2

CHEQUES

PART I

CHEQUES – GENERALLY

Applicability to cheques of certain provisions relating to certain other bills

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

Presentment of cheque for payment

68. (1) Subject to 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 or herself and the bank, to have the cheque paid, and suffers actual damage through the delay, the drawer or person is discharged to the extent of such damage, to the extent to which the drawer or person is a creditor of such bank to a larger amount than he or she would have been had such cheque been paid;
- (b) the holder of a cheque as to which such drawer or person referred to in paragraph (a) is so discharged becomes a creditor, in stead of such drawer or person, of such bank to the extent of such discharge, and is entitled to recover the amount from such bank.

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

Liability of drawee who has certified cheque

69. (1) A cheque is certified if the drawee signs it and adds words to the reverse side of 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 or she -

- (a) undertakes to 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 or her certification; and
- (b) is precluded from denying to a holder in due course -
 - (i) the existence of the drawer, the genuineness of drawer's signature and the drawer's capacity and authority to draw the cheque; and
 - (ii) the existence of the payee and the payee's then capacity to indorse.

Prevention of fraud

70. Any person who -

- (a) is required by law to have his or her financial statements audited by a person registered under the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), or by the Auditor-General; or
- (b) is obliged to appoint an accounting officer in terms of section 59 of the Close Corporation Act, 1984 (Act No. 69 of 1984),

must exercise reasonable care in the custody of cheque forms and in the reconciliation of its bank statements.

Revocation of bank's authority

71. (1) Subject to subsection (2), the duty and authority of a bank to pay a cheque drawn on it by its customer are revoked when the bank receives -

- (a) a countermand of payment;
 - (b) a notice of the customer's death or incapacity; or
 - (c) a notice of the customer having been sequestered or wound-up or placed under judicial management or declared insolvent.
- (2) A countermand or notice referred to in subsection (1) must -
- (a) identify the cheque, in the case of countermand, and the customer with reasonable particularity; and
 - (b) give the drawee a reasonable opportunity to act on such countermand or notice.

PART II

CROSSED CHEQUES

General and specific crossings on cheques

72. (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.

(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 specifically and to that bank.

Non-transferable cheques

73. (1) If a cheque bears 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 is not transferable but is valid as between the parties to the cheque;
- (b) the cheque is deemed to be crossed generally, unless it is crossed specifically; and
- (c) the words "not transferable" or "non transferable" may not be cancelled and any purported cancellation is of no effect.

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

- (a) an indorsement intended to prevent transfer of a cheque; or
- (b) words prohibiting transfer, or indicating an intention that a cheque is not transferable,

other than in the manner provided for in this section.

Crossing by drawer or after issue

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

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

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

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

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

Crossing material part of cheque

75. A crossing authorised by this Act is a material part of a crossed cheque, and a person may not obliterate, cancel or, except as authorised by this Act, add to or alter such a crossing.

Duties of banks as to crossed cheques

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

(2) If a cheque is crossed specifically, the bank on which it is drawn may 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 specifically 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 the cheque is drawn may not pay the cheque.

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

(a) pays such cheque, if it is crossed generally, to any person other than a bank;

(b) pays such cheque, if it is crossed specifically, to any person other than the bank to which it is crossed or the latter's agent for collection, if it is a bank; or

(c) pays such cheque, if it is crossed as is contemplated in subsection (3),

it is liable to the true owner of the cheque for any loss he or she has suffered to the cheque having been so paid.

(5) 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 authorised by this Act, the bank paying the cheque in good faith and without negligence does not incur any liability, and the payment may not be questioned, by reason of -

(a) the cheque having been crossed;

(b) the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act; or

(c) the 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.

Protection to bank and drawer where cheque is crossed

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

- (a) the bank paying the cheque; or
- (b) the drawer, if the cheque has come into the hands of the payee,

is entitled, respectively, to the same rights and is placed in the same position as if payment of the cheque had been made to the true owner of the cheque.

Effect of crossing and addition of words "not negotiable" on rights of holder

78. If a person takes a crossed cheque which bears on it the words "not negotiable", he or she does not have, and is not capable of giving a better title to the cheque than that which the person from whom he or she took it had.

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

79. (1) If a crossed cheque marked "not negotiable" was stolen or lost, 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 or she may suffer owing to the cheque having been paid, the true owner, if he or she suffered any loss as a result of the theft or loss of the cheque, is entitled to recover from any person who was a possessor of the cheque after the theft or loss, whether such person -

- (a) gave a consideration for the cheque; or
- (b) took the cheque as a donee,

an amount equal to the true owner's loss or the amount of the cheque, whichever is the lesser.

(2) If a person, after the theft or loss of a cheque referred to in subsection (1), has paid any such cheque into his or her account with a bank after having paid, or for the purpose of paying, the amount of the cheque or part of the cheque to the person from whom such person received the cheque, or, on that person's direction, to any other person, such person, for the purposes of subsection (1), is deemed -

- (a) to have been a possessor of the cheque; and
- (b) to have given a consideration for the cheque,

except such person is a collecting bank employing another bank as its agent for the collection of any such cheque.

(3) If a person took a cheque referred to in subsection (1) into his or her possession or custody after the theft or loss of such cheque, and fails to furnish the true owner or any person who has in terms of subsection (7) the rights of a true owner, at the owner's or that person's request, with any information at his or her disposal in connection with such cheque, such person, for the purposes of subsection (1), is deemed -

- (a) to have been a possessor of the cheque; and
- (b) either to have given a consideration for the cheque, or to have taken the cheque as a donee.

(4) Every possessor of any cheque referred to in subsection (1), for the purposes of this section, and until the contrary is proved, is deemed either to have given a consideration for the cheque, or to have taken it as a donee.

(5) For the purposes of subsection (1), a bank which receives payment of any cheque referred to in that subsection for a customer, subject to subsection (3), is not regarded as having given a consideration for the cheque, merely because -

- (a) it has in its own books credited its customer's account with the amount of the cheque before receiving payment thereof; or
- (b) any such payment is applied towards the reduction or settlement of any debt owed by the customer to the bank.

(6) If in any action under this section the defendant proves that when he or she 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 or she, subject to subsection (3), is not liable under this section.

(7) A person who has discharged his or her liability under subsection (1) and who took the cheque in good faith and without notice of any defect in the title of the transferor has the rights conferred upon a true owner by that subsection as against any prior possessor of the cheque after the theft or loss, whether such possessor gave a consideration for the cheque or took the cheque as a donee.

(8) For the purposes of this section, the giving of a consideration includes the receiving of any cheque referred to in subsection (1) in reduction or settlement of any debt or liability.

Application of sections 72 to 79 to certain documents other than cheques

80. (1) Sections 72 to 79, inclusive, apply -

- (a) 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), as if such document were a cheque;
- (b) with necessary changes to any document which -
 - (i) was issued on behalf of the State;
 - (ii) is drawn upon or addressed to a servant of the State (in this paragraph called the drawee); and
 - (iii) 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 such document were a cheque and as if the drawee were a bank and the State its customer.

(2) Nothing in subsection (1) renders any document referred to in that subsection a negotiable instrument.

PART III

UNINDORSED OR IRREGULARLY INDORSED INSTRUMENTS

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

81. (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.

Rights of bank if unindorsed or irregularly indorsed cheque or certain other document is delivered to it for collection

82. (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 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 cheque in pledge for such indebtedness with the same rights and subject to the same liabilities as the holder had.

Evidential value of payment of unindorsed or irregularly indorsed cheque or certain other document

83. If an unindorsed or irregularly indorsed 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.

Negotiability of document referred to in sections 81, 82 and 83

84. Nothing in section 81, 82 or 83 renders a non-negotiable document negotiable.

CHAPTER 3**PROMISSORY NOTES****Promissory note defined**

85. (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 or her 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 it is indorsed by the maker.

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

Delivery a requirement for coming into existence of note

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

Joint or joint and several liability on note

87. (1) A note may be made by two or more persons and they may be liable on the note 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.

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

88. (1) If a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement within the meaning of subsection (2), and 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 must 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 or she had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment

89. (1) 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 is the place of business of the payee and the note remains in his or her hands.

(2) Presentment for payment -

(a) except for subsection (1), is not necessary in any other case to render the maker of a note liable;

(b) is necessary to render the indorser of a note liable.

(3) 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.

(4) If a place of payment is indicated by way of memorandum only, presentment at that place is necessary to render an indorser liable, but presentment to the maker elsewhere, if sufficient in other respects, is sufficient to render an indorser liable.

Liability of maker

90. The maker of a note by making it -

(a) engages that he or she will pay it according to its tenor; and

(b) is precluded from denying to a holder in due course the existence of the payee and his or her then capacity to indorse.

Application to notes of provisions relating to bills

91. (1) Subject to this chapter, the provisions of this Act relating to bills, except for the provisions on presentment for acceptance, acceptance and bills in a set, apply with the necessary changes to notes.

(2) In applying the provisions relating to bills to notes -

(a) the maker of a note is deemed to correspond with the acceptor of a bill; and

(b) the first indorser of a note is deemed to correspond with the drawer of an accepted bill payable to drawer's order.

CHAPTER 4

GENERAL PROVISIONS

Good faith

92. 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.

Signature

93. If by this Act any instrument or writing is required to be signed by any person it is not necessary that he or she should sign it with his or her own hand, but -

(a) it is sufficient if his or her signature is written or printed on it by some other person, by or under his or her authority; and

(b) the authorised sealing or stamping with a seal or stamp of a corporation is sufficient and is deemed to be equivalent to the signing or indorsement of any such instrument or writing.

Computation of time

94. 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.

Protest of bill when service of notary cannot be obtained

95. (1) If a dishonoured bill or note is authorised to be protested, and the service 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.

(2) The certificate referred to in subsection (1) must be in the form of Schedule 1, and if used, it operates in all respects as if it were a formal protest of the bill, and it is sufficient.

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

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

Laws not affected by this Act

97. Nothing in this Act affects or in any way restricts -

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

Savings and transitional provisions

98. Unless otherwise provided in this Act -

- (a) anything done under any law repealed by this Act, and which could have been done under a corresponding provision of this Act, is deemed to have been done under that corresponding provision; and
- (b) a repeal of any law by this Act does not affect the validity of any instrument, which, at the commencement of this Act is valid according to any law so repealed.

Repeal of laws

99. The laws set out in Schedule 2 are repealed to the extent indicated in the third column thereof.

Short title and commencement

100. This Act -

- (a) is called the Bills of Exchange Act, 2003; and
- (b) commences on a date determined by the Minister of Finance by notice in the *Gazette*.

SCHEDULE 1

BILLS OF EXCHANGE ACT, 2003

**CERTIFICATE OF ATTESTATION OF DISHONOUR
OF BILL WHEN NOTARY NOT AVAILABLE
(Section 95)**

I,, landowner or householder of
.....
in the magisterial district of,
at the request of,
there being no notary available did on the day of
20 at, demand payment or acceptance
from, of the bill of exchange which
or a copy of which is hereto attached to which demand he or she answered (state answer,
if any)
wherefore I now in the presence of (name of witnesses)
and, do protest the bill.

.....
Landowner/Householder

WITNESSES:

- 1.
- 2.

Note: The bill itself or a copy of the bill and or everything appearing thereon should be attached.

SCHEDULE 2

LAWS REPEALED
(Section 99)

No. and year of law	Short title	Extent of repeal
Act No. 34 of 1964	Bills of Exchange Act, 1964	The whole
Ordinance No. 8 of 1965	Bills of Exchange Ordinance, 1965	The whole
Act No. 57 of 1971	Suretyship Amendment Act, 1971	The whole reference to the Bills of Exchange Act, 1964 in the Schedule to that Act