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Bills of Exchange Act, 1902

Act 11 of 1902

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Bills of Exchange Act, 1902

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Bills of Exchange Act, 1902 Act 11 of 1902

Commenced on 15 April 1902

[This is the version of this document at 1 December 1998.]

An Act to consolidate, amend and declare the law relating to bills of exchange, cheques and promissory notes.

Part I – Preliminary

1. Short title

This Act shall be known and cited as the Bills of Exchange Act, No. 11 of 1902.

2. Interpretation

In this Act, unless the context otherwise requires—

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

"**action**" includes a counter-claim, claim in reconvention and set-off;

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

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

"**bill**" means bill of exchange;

"**cheque**" means a bill of exchange drawn on a banker payable on demand;

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

"**holder**" means the payee or endorsee of a bill or note, who is in possession of it, or the bearer thereof;

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

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

"**month**" means calendar month;

"**non-business days**" include Sunday, and any day appointed by any law or under the authority of any law as a solemn fast or day of thanksgiving or as a public holiday;

"**note**" means promissory note;

"**to note**" is to make a notarial minute in accustomed form of the circumstances of dishonour, and at the time of dishonour, of a bill or note;

"**payment in due course**" means payment made at or after the maturity of a bill to the holder thereof, in good faith and without notice that his title to the bill is defective;

"**value**" means valuable consideration;

"**written**" includes printed;

"**writing**" includes print.

Part II – Bills of exchange - Form and interpretation

3. Bill of exchange defined

- (1) A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer.
- (2) An instrument which does not comply with these conditions or which orders any act to be done in addition to the payment of money is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay coupled with—
 - (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount; or
 - (b) a statement of the transaction which gives rise to the bill; or
 - (c) a statement on the bill that it is drawn against specified documents attached thereto for delivery or 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.
- (4) A bill is not invalid by reason—
 - (a) that it is not dated;
 - (b) that it does not specify the value given or that any value has been given therefor;
 - (c) that it does not specify the place where it is drawn or the place where it is payable.

4. Effect where different parties to the bill are the same person

- (1) A bill may be drawn payable to or to the order of the drawer; or it may be drawn payable to or to the order of the drawee.
- (2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange or as a promissory note.

5. Address to drawee

- (1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.
- (2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

6. Certainty required as to payee

- (1) Where a bill is not payable to bearer the payee must be named or otherwise indicated therein with reasonable certainty.
- (2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two or one or some of several payees.

- (3) A bill may also be made payable to the holder of an office for the time being.
- (4) Where the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.

7. What bills are negotiable

- (1) When a bill contains words prohibiting transfer or indicating an intention that it should not be transferable it is valid as between the parties thereto, but is not negotiable.
- (2) A negotiable bill may be payable either to order or to bearer.
- (3) A bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.
- (4) A bill is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
- (5) Where a bill either originally or by indorsement is expressed to be payable to the order of a specified person and not to him or his order it is nevertheless payable to him or his order at his option.

8. Sum payable

- (1) The sum payable by a bill is a sum certain within the meaning of this Act although it is required to be paid—
 - (a) with interest;
 - (b) by stated instalments;
 - (c) by stated instalments with a provision that upon default in payment of any instalment the whole shall become due;
 - (d) according to an indicated rate of exchange 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 unless the instrument otherwise provides interest runs from the date of the bill, and if the bill is undated from the issue thereof.

9. Bill payable on demand

- (1) A bill is payable on demand—
 - (a) if it is expressed to be payable on demand or at sight, or on presentation; or
 - (b) if no time for payment is expressed.
- (2) If a bill is accepted or indorsed when it is overdue it shall, as regards the acceptor who so accepts or any indorser who so desires it, be deemed a bill payable on demand.

10. Bill payable at a future time

A bill is payable at a determinable future time within the meaning of this Act, which is expressed to be payable—

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

occurrence of a specified event which may or may not happen is not a bill, and the happening of the event does not cure the defect.

11. Omission of date in bill payable after date

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

Provided that—

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

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

12. Ante-dating and post-dating

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

13. Computation of time of payment

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 any bill would fall due shall be a non-business day the due date of the bill shall be the next business day;
- (b) there are no days of grace in Swaziland;
- (c) if a bill is payable at a fixed period after date, after sight or after the happening of a specified event the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;
- (d) if a bill is payable at a fixed period after sight the time begins to run from the date of the acceptance if the bill be accepted and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

14. Case of need

- (1) The drawer of a bill or any indorser may insert therein the name of a person (hereinafter referred to as the "referee in case of need") to whom the holder may resort in case of need; that is to say, in case the bill is dishonoured by non-acceptance or non-payment.
- (2) The holder may at his option resort to the referee in case of need or not as he may think fit.

15. Optional stipulations by drawer or indorser

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

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

16. Definition and requisites of acceptance

- (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.
- (2) An acceptance is invalid unless it complies with the following conditions, namely:
 - (a) it must be written on the bill and be signed by the drawee, the mere signature of the drawee without additional words, however, being sufficient;
 - (b) it must not express that the drawee will perform his promise by any other means than the payment of money.

17. Time for acceptance

- (1) A bill may be accepted—
 - (a) before it has been signed by the drawer or while otherwise incomplete;
 - (b) when it is overdue or after it has been dishonoured by a previous refusal to accept, or by non-payment.
- (2) If a bill payable after sight is dishonoured by non-acceptance and the drawee subsequently accepts it the holder in the absence of any different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

18. General and qualified acceptances

- (1) An acceptance is either general or qualified.
- (2) A general acceptance assents without qualification to the order of the drawer.
- (3) A qualified acceptance in express terms varies the effect of the bill as drawn, and in particular an acceptance is qualified which is—
 - (a) conditional: that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
 - (b) partial: that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
 - (c) local: that is to say, an acceptance to pay only at a particular specified place. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere;
 - (d) qualified as to time;
 - (e) the acceptance of some one or more of the drawees but not of all.

19. Inchoate instruments

- (1) If a simple signature on a blank paper to which a stamp has been affixed by the signer is delivered by him 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.
- (2) Such stamp shall cover using the signature for that of the drawer or the acceptor or an indorser; and in like manner when a bill is wanting in any material particular the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.
- (3) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on, or if no time be agreed on then within a reasonable time and strictly in accordance with the authority given:

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

- (4) For the purpose of sub-section (3) the question what a reasonable time is, is a question of act.

20. Delivery

- (1) Every contract on a bill whether it be the drawer's, the acceptor's or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto:

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

- (2) As between immediate parties and as regards a remote party other than a holder in due course the delivery:
 - (a) in order to be effectual shall be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;
 - (b) may be shown to have been conditional or for a special purpose only and not for the purpose of transferring the property in the bill.
- (3) If a bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.
- (4) If a bill is no longer in the possession of a party who has signed it as a drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Part III – Capacity and authority of parties

21. Capacity of parties

- (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract:

Provided that to the validity of a bill accepted or indorsed by a woman the renunciation of the benefits *senatus consultum velleianum* and *authentica si qua mulier* shall not be requisite.

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

22. Signature essential to liability

No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such:

Provided that—

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

23. Forged and unauthorised signatures

Subject to the provisions of this Act where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be the forged or unauthorised signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof

against any party thereto can be acquired through or under that signature unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to forgery.

24. Procuration signature

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

25. As agent or in representative capacity

- (1) If a person signs a bill as drawer, indorser or acceptor and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon:

Provided that if such person had no authority to sign for and on behalf of such principal or in a representative character he shall be personally liable on the said bill.

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

Part IV – The consideration of a bill

26. Value and holder for value

- (1) Valuable consideration for a bill may be constituted by—
 - (a) any cause sufficient to support an action founded on contract or agreement;
 - (b) an antecedent debt or liability, irrespective of whether the bill is payable on demand or at a future time.
- (2) If value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.
- (3) If the holder of a bill has a lien on it arising either from contract or by implication of law he is deemed to be a holder for value to the extent of the sum for which he has a lien.

27. Accommodation bill or party

- (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or indorser without receiving value therefor, and for the purpose of lending his name to some other person.
- (2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether when such holder took the bill he knew such party to be an accommodation party or not.

28. Holder in due course

- (1) A holder in due course is a holder who has taken a bill complete and regular on the face of it under the following conditions, namely:
 - (a) that he became the holder of it before it was overdue, and without notice that it had previously been dishonoured if such was the fact;

- (b) that he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.
- (2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill or the acceptance thereof by fraud or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to fraud.
- (3) A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

29. Presumption of value and good faith

- (1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.
- (2) Every holder of a bill is *prima facie* deemed to be a holder in due course:
Provided that if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation, of the bill is affected with fraud or illegality the burden of proof is shifted, unless and until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill.

Part V – Negotiation of bills

30. Negotiation of bill

- (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.
- (2) A bill payable to bearer is negotiated by delivery.
- (3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.
- (4) If the holder of a bill payable to his order transfers it for value without indorsing it the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.
- (5) If any person is under obligation to indorse a bill in a representative capacity he may indorse the bill in such terms as to negative personal liability.

31. Requisites of a valid indorsement

- (1) An indorsement in order to operate as a negotiation must comply with the following conditions, namely:
 - (a) it must be written on the bill itself and be signed by the indorser, the simple signature of the indorser on the bill without additional words being sufficient.
 - (b) it must be an indorsement of the entire bill, a partial indorsement (that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally) not operating as a negotiation of the bill.
 - (c) if a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse unless the one indorsing has authority to indorse for the others.
 - (d) if in a bill payable to order the payee or indorsee is wrongly designated or his name is mis-spelt, he shall indorse the bill as therein described, adding his proper signature.

- (e) if there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill until the contrary is proved.
 - (f) an indorsement may be made in blank or special and may also contain terms making it restrictive.
- (2) An indorsement written on the allonge or on a "copy" of bill issued or negotiated in a country where copies are recognised is deemed to be written on the bill itself.

32. Conditional indorsement

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

33. Indorsement in blank and special indorsement

- (1) An indorsement in blank specifies no indorsee and a bill so indorsed becomes payable to bearer.
- (2) A special indorsement specifies the person to whom or to whose order the bill is to be payable.
- (3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.
- (4) If a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

34. Restrictive indorsement

- (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as for example, if a bill be indorsed "Pay D. only", or "Pay D. for the account of X" or "Pay D. or order for collection".
- (2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.
- (3) If a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

35. Negotiation of overdue or dishonoured bill

- (1) 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 thence-forward no person who takes it can acquire or give a better title than that which the person from whom he took it had.
- (3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time.
- (4) The question what an unreasonable length of time for the purpose of subsection (4) is, is a question of fact.

- (5) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.
- (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 thereto at the time of dishonour:
Provided that nothing in this sub-section shall affect the rights of a holder in due course.

36. Negotiation of bill to party already liable thereon

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

37. Rights of the holder

The rights and powers of the holder of the bill are as follows:

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

Part VI – General duties of the holder

38. When presentment for acceptance is necessary

- (1) If a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) If a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it 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 business or residence of the drawee has not time with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

39. Time for presenting bill payable after sight

- (1) Subject to the provisions of this Act, if a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he does not do so the drawer and all indorsers prior to that holder are discharged.

- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills and the facts of the particular case.

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

- (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:
- (a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue.
 - (b) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept for all, then presentment may be made to him only.
 - (c) Where the drawee is dead presentment may be made to his executor.
 - (d) Where the drawee is insolvent or has assigned his estate, presentment may be made to him or his trustee or assignee.
 - (e) A presentment through the post office, if in due course, is sufficient.
- (2) Presentment in accordance with these rules 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 person, or a person not having capacity to contract by bill;
 - (b) after the exercise of reasonable diligence such presentment cannot be effected;
 - (c) although the presentment has been irregular acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill on presentment will be dishonoured does not excuse presentment.

41. Non-acceptance

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

42. Dishonour by non-acceptance and its consequences

- (1) A bill is dishonoured by non-acceptance if—
- (a) it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
 - (b) presentment for acceptance is excused and the bill is not accepted.
- (2) Subject to the provisions of this Act, if a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

43. Duties as to qualified acceptances

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

- (2) If a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill:
- Provided that the provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given.
- (3) If a bill has been accepted as to part, it must be protested as to the balance.
- (4) When a drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

44. Rules as to presentment for payment

- (1) Subject to the provisions of this Act, a bill must be duly presented for payment, and if is not so presented the drawer and indorsers shall be discharged.
- (2) A bill is duly presented for payment which 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, then subject to the provisions of this Act presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render an indorser liable.
 - (c) Presentment must be made by the holder, or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer or to some person authorised to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found.
- (3) In determining what is a reasonable time for the purpose of sub-section 22(b) regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.
- (4) A bill is presented at the proper place if—
- (a) a place of payment is specified in the bill and the bill is there presented;
 - (b) no place of payment is specified, but the address of the drawee or acceptor is given in the bill and the bill is there presented;
 - (c) no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not at his ordinary residence if known;
 - (d) in any other case, the bill presented to the drawee or acceptor wherever he can be found, or at his last-known place of business or residence.
- (5) If a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6) If a 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.
- (7) If the drawee or acceptor of a bill is dead and no place of payment is specified, presentment must be made to his executor if such there be, and with the exercise of reasonable diligence he can be found.
- (8) A presentment through the post office, if in due course, is sufficient.

45. Excuses for delay or non-presentment for payment

- (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence:
Provided that the cause of delay ceases to operate presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with—
 - (a) if after the exercise of reasonable diligence presentment as required by this Act cannot be effected;
 - (b) if the drawee is a fictitious person;
 - (c) as regards the drawer if the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
 - (d) as regards an indorser if the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented;
 - (e) by waiver of presentment, express or implied;
 - (f) if the drawee or acceptor is insolvent, or has assigned his estate.
- (3) Subject to sub-section (2), the fact that the holder has reason to believe that the bill on presentment will be dishonoured does not dispense with the necessity for presentment.

46. Dishonour by non-payment

- (1) A bill is dishonoured by non-payment if—
 - (a) it is duly presented for payment and payment is refused or cannot be obtained; or
 - (b) presentment is excused and the bill is overdue and unpaid.
- (2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

47. Notice of dishonour and effect of non-notice

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

Provided that if—

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

48. Rules as to notice of dishonour

- (1) Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:
 - (a) the notice must be given by or on behalf of the holder, or by or on behalf of the indorser, who at the time of giving it is himself liable on the bill;

- (b) notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not;
 - (c) if the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given;
 - (d) if notice is given by or on behalf of an indorser entitled to give notice, as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given;
 - (e) the notice may be given in writing, or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment;
 - (f) the return of a dishonoured bill to the drawer or an indorser is in point of form deemed a sufficient notice of dishonour;
 - (g) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication;
 - (h) if notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf;
 - (i) if the drawer or indorser is dead and the party giving notice knows it, the notice must be given to an executor, if such there be, and with the exercise of reasonable diligence he can be found;
 - (j) if the drawer or indorser is insolvent, notice may be given either to the person himself or to the person in whom his estate is by law vested;
 - (k) 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 the others;
 - (l) the notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter;
 - (m) if a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill or he may give notice to his principal, and he give notice to his principal he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (2) For the purpose of sub-section (1)(e) in the absence of special circumstances it is deemed that where it is not given within a reasonable time unless notice is given or the notice is posted on the business day next after the day or where the bill is dishonoured.
- (3) A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (4) If a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after dishonour.
- (5) 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.

49. Excuses for non-notice and delay

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

Provided that if the cause of delay ceases to operate the notice must be given with reasonable diligence.

- (2) Notice of dishonour is dispensed with—
 - (a) if after the exercise of reasonable diligence notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged;
 - (b) by expressed or implied waiver, either before the time of giving notice has arrived, or after omission to give due notice;
 - (c) as regards the drawer in the following cases namely—
 - (i) where drawer and drawee are the same person;
 - (ii) where the drawee is a fictitious person or a person not having capacity to contract;
 - (iii) where the drawer is the person to whom the bill is presented for payment;
 - (iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;
 - (v) where the drawer has countermanded payment;
 - (d) as regards the indorser in the following cases, namely—
 - (i) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill;
 - (ii) where the indorser is the person to whom the bill is presented for payment;
 - (iii) where the bill was accepted or made for his accommodation.

50. Noting or protest of bill

- (1) If a bill has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and if a bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.
- (2) If it be not so protested the drawer and indorsers are discharged, with the exception of the drawer or payee of a cheque on a banker as hereinafter defined.
- (3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
- (4) Subject to this Act, when a bill is noted or protested it must be noted on the day of its dishonour:
Provided that if a bill has been duly noted the protest may be subsequently extended as of the date of the noting.
- (5) If the acceptor of a bill becomes insolvent or assigns his estate or suspends payment before it matures the holder may cause the bill to be protested for better security against the drawer and indorsers.
- (6) A bill must be protested at the place where it is dishonoured:
Provided that—
 - (a) if a bill is presented through the post office and returned by post dishonoured it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours then not later than the next business day;
 - (b) if a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance it must, if protested, be protested for non-

payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.

- (7) A protest must contain a copy of the bill and must 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 protest, the cause or reason for protesting the bill;
 - (c) the demand made and the answer given (if any), or the fact that the drawee or acceptor could not be found.
- (8) If a bill is lost or destroyed or is wrongly detained from the person entitled to hold it protest may be made on a copy or written particulars thereof.
- (9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour.
- (10) Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence:
Provided that if the cause of delay ceases to operate the bill must be noted or protested, when necessary, with reasonable diligence.

51. Duties of holder as regards drawee or acceptor

- (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 the 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 it or that notice of dishonour should be given to such acceptor.
- (4) When a holder of a bill presents it for payment he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Part VII – Liabilities of parties

52. Liability of drawee not automatic

A bill of itself does not operate as an assignment of funds in the hands of the drawee 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.

53. Liability of acceptor

The acceptor of a bill by accepting it—

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

- (iii) in the case of a bill payable to the order of a third person the existence of the payee and his then capacity to indorse, but not the genuineness or the validity of his indorsement.

54. Liability of drawer or indorser

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

55. Stranger signing a bill liable as indorser

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

56. Measure of damages against parties to dishonoured bill

If a bill is dishonoured the measure of damages, which shall be deemed to be liquidated damages, shall be as follows—

- (a) the holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer or from a prior indorser—
 - (i) the amount of the bill;
 - (ii) interest thereon in accordance with the stipulation (if any) in the bill, or 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;
 - (iii) the expenses of noting, and where the protest has been extended the expenses of the protest;
- (b) in the case of a bill which has been dishonoured abroad in lieu of the above damages the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange, with interest thereon until the time of payment;
- (c) if by this Act interest may be recovered as damages such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate interest as damages may or may not be given at the same rate as interest proper.

57. Transferor by delivery and transferee

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

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

Part VIII – Discharge of bill

58. Payment in due course

- (1) A bill is discharged by payment in due course or *pro tanto* by payment of part notified by indorsement on the bill if such payment be made by or on behalf of the drawee or acceptor.
- (2) Subject to sub-sections (3), (4) and (5), if a bill is paid by the drawer or an indorser it is not discharged.
- (3) If a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.
- (4) If a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements and again negotiate the bill.
- (5) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

59. Banker paying demand draft where indorsement is forged

If a bill payable to order on demand is drawn on a banker and the banker pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority:

Provided such indorsement does not purport to be that of a person who is a customer of the banker at the branch on which the said bill is drawn.

60. Acceptor the holder at maturity

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

61. Discharge by renunciation

- (1) If the holder of a bill at or after its maturity absolutely and unconditionally renounced his rights against the acceptor the bill is discharged:
Provided that the renunciation shall be in writing on the bill unless the bill is delivered up to the acceptor.
- (2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at or after its maturity.
- (3) Nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

62. Discharge by cancellation

- (1) If a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.
- (2) Any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent in which case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.
- (3) A cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative:

Provided that if where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

63. Alteration of bill

- (1) If a bill or acceptance is materially altered then the liability of all parties who were parties to the bill at the date of alteration and who did not assent to it must be regarded as if the alteration had not been made; but any party who has himself made, authorised or assented to the alteration and all subsequent indorsers are liable on the bill as altered.
- (2) For the purpose of sub-section (1) material alterations include any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally the addition of a place of payment, without the acceptor's assent.

Part IX – Acceptance and payment for honour

64. Acceptance for honour *supra* protest

- (1) If a bill of exchange has been protested for dishonour by non-acceptance or protested for better security and is not overdue, any person, not being a party already liable thereon, may with the consent of the holder intervene and accept the bill *supra* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.
- (2) A bill may be accepted for honour for part only of the sum for which it is drawn.
- (3) An acceptance for honour *supra* protest in order to be valid must—
 - (a) be written on the bill and indicate that it is an acceptance for honour;
 - (b) be signed by the acceptor for honour.
- (4) If an acceptance for honour does not expressly state for whose honour it is made it is deemed to be an acceptance for the honour of the drawer.
- (5) If a bill payable after sight is accepted for honour its maturity is calculated from the date of noting for non-acceptance and not from the date of acceptance for honour.

65. Liability of acceptor for honour

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

66. Presentment to acceptor for honour

- (1) If a dishonoured bill has been accepted for honour *supra* protest or contains a reference in case of need it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.
- (2) If the address of the acceptor for honour is in the same place where the bill is protested for non-payment the bill must be presented to him not later than the day following its maturity; and if the address of the acceptor for honour is in some place other than the place where it was protested for non-payment the bill must be posted or forwarded for presentment not later than the business day next following its maturity for presentment to him.
- (3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.
- (4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

67. Payment for honour *supra* protest

- (1) If a bill has been protested for non-payment any person, not being a party already liable thereon, may intervene and pay it *supra* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.
- (2) If two or more persons offer to pay a bill for the honour of different parties the person whose payment will discharge most parties to the bill shall have the preference.
- (3) Payment for honour *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honour, which may be appended to the protest or from an extension of it.
- (4) The notarial act of honour must be founded on a declaration made by the payer for honour or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays.
- (5) If a bill has been paid for honour all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is substituted for and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays and all parties liable to that party.
- (6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest, and if the holder does not on demand deliver them up he shall be liable to the payer for honour in damages.
- (7) If the holder of a bill refuses to receive payment *supra* protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Part X – Lost instruments

68. Holder's rights to duplicate of lost bill

- (1) If a bill is lost before it is overdue the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving adequate security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.
- (2) If the drawer on such request as refuses to give such duplicate bill he may be compelled to do so.

69. Action on lost bill

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

Part XI – Bill in a set

70. Rules as to set

- (1) If a bill is drawn in a set, each part of a set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.
- (2) If a holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.
- (3) If two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues is as between such holders deemed the true owner of the bill:
Provided that nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.
- (4) The acceptance may be written on any part, and it must be written on one part only, but if the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course he is liable on every such part as if it were a separate bill.
- (5) If the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.
- (6) 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 XII – Conflict of laws

71. Rules where laws conflict

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

- (a) the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of every supervening contract such as acceptance or indorsement or acceptance *supra* protest is determined by the law of the place where such contract was made:
Provided that—
 - (i) where a bill is issued out of Swaziland it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;
 - (ii) where a bill issued out of Swaziland conforms as regards requisites in form to the law of Swaziland it may for purposes of enforcing payment thereof be treated as valid as between all persons who negotiate, hold or become parties to it in Swaziland;
- (b) subject to the provisions of this Act the interpretation of the contract of the drawer, indorser, acceptor or acceptor *supra* protest of a bill is determined by the law of the place where such contract is made:

Provided that where a bill drawn and payable in Swaziland is indorsed elsewhere the indorsement shall as regards the payer be interpreted according to the law of Swaziland;

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

Part XIII – Cheques

72. Applicability to cheques of other provisions of the Act

Except as otherwise provided in this Part the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

73. Presentment of cheque for payment

- (1) Subject to the provisions of this Act—
 - (a) if a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage; that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid;
 - (b) the holder of a cheque to which such drawer or person is discharged shall be a creditor in lieu of such drawer or person of such banker to the extent of such discharge and entitled to recover the amount from him.
- (2) In determining what is a reasonable time for the purpose of sub-section (1)(a) regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

74. Revocation of banker's authority

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

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

75. General and special crossings defined

- (1) If a cheque bears across its face an addition of—
 - (a) the words "and Company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or
 - (b) two parallel transverse lines simply, 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 banker either with or without the words "not negotiable" that addition constitutes a crossing and the cheque is crossed specially and to that banker.

76. Crossings by drawer or after issue

- (1) A cheque may be crossed generally or specially by the drawer.
- (2) If a cheque is uncrossed the holder may cross it generally or specially.
- (3) If a cheque is crossed generally the holder may cross it specially.
- (4) If a cheque is crossed specially or generally the holder may add the words "not negotiable".
- (5) If the cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker for collection.
- (6) If an uncrossed cheque or a cheque crossed generally is sent to a banker for collection he may cross it specially to himself.

77. Crossing a material part of cheque

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

78. Duties of bankers as to crossed cheques

- (1) If a cheque is crossed generally the banker on whom it is drawn shall not pay it otherwise than to a banker.
- (2) If a cheque is crossed specially the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or to his agent for collection being a banker.
- (3) If a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker the banker on whom it is drawn shall refuse payment thereof.
- (4) If the banker on whom the cheque is drawn which is so crossed nevertheless pays the same or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid:

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

79. Protection to banker and drawer where cheque is crossed

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

80. Effect of crossing on holder

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

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

- (1) If a cheque has been stolen or lost while it was crossed as hereinbefore provided, and while it bore on it the words "not negotiable", and it has been paid by the banker upon whom it is drawn under circumstances which do not render such banker liable in terms of this Act to the true owner of the cheque for any loss he may sustain owing to the cheque having been paid, the true owner shall, if he has suffered any loss as a result of the theft or loss of the cheque, be entitled to recover from any person who has been the possessor thereof after the theft or loss, and either gave a consideration therefor or took it as a donee, an amount equal to the true owner's said loss, but not exceeding the amount of the cheque.
- (2) If a person has after the theft or loss paid any such cheque into his account with a banker after having paid or for the purpose of paying the amount of the cheque or part thereof to the person from whom he received the cheque, or, on his direction, to any other person, he shall, for the purposes of sub-section (1), be deemed to have been a possessor of the cheque and to have given a consideration therefor:
Provided that this sub-section shall not apply to a collecting banker employing another banker as his agent for the collection of any such cheque.
- (3) If a person has received any such cheque into his possession or custody after the theft or loss, and fails to furnish the true owner or any person who has in terms of subsection (7) the rights of a true owner, at his request, with any information at his disposal in connection with the cheque, he shall for the purposes of sub-section (1) be deemed to have been a possessor of the cheque and either to have given a consideration therefor or to have taken it as a donee.
- (4) Every possessor of any such cheque shall, for the purposes of this section, and until the contrary is proved, be deemed either to have given a consideration therefor or to have taken it as a donee.
- (5) For the purposes of sub-section (1) a banker who receives payment of any such cheque for a customer shall, subject to sub-section (3), not be deemed to have given a consideration therefor, merely because he has in his own books credited his customer's account with the amount of the cheque before receiving payment thereof, or because any such payment is applied towards the reduction or settlement of any debt owed by the customer to the banker.
- (6) If in any action under this section the defendant proves that when he became the possessor of the cheque, it did not appear to be crossed or to have had a crossing which has 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 have been obliterated, he shall, subject to sub-section (3), not be held liable under this section.
- (7) A person who has discharged his liability under sub-section (1) or under this sub-section, and who took the cheque in good faith and without notice of any defect in the title of the transferor, shall as against any prior possessor of the cheque, who became a possessor thereof after the theft or loss and either gave a consideration therefor or took it as a donee, have the rights conferred upon a true owner by sub-section (1).
- (8) For the purpose of this section the giving of a consideration includes the receiving of any such cheque in reduction or settlement of any debt or liability.

82. Sections 75 to 81 to extend to documents other than cheques crossed for like object

Sections 75 to 81 inclusive shall extend to any document issued by a customer of any banker and intended to enable any person to obtain payment on demand from such banker (or from any banker if the document was issued on behalf of the Government) of the sum mentioned in such document, and shall so extend in like manner as if the said document were a cheque; and the said sections shall *mutatis mutandis* also extend to any document which—

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

as if the said document were a cheque and as if the drawee were a banker and the Government his customer:

Provided that nothing herein contained shall be deemed to render any such document a negotiable instrument.

Part XIV – Unindorsed or irregularly indorsed instruments

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

- (1) If a banker in good faith and in the ordinary course of business credits the account of a customer of his with or pays to another banker the amount of—
 - (a) any cheque drawn on him;
 - (b) any other document issued by a customer of his and intended to enable any person to obtain payment on demand of the sum mentioned in such document from him (or from any banker, if the document was issued on behalf of Government); or
 - (c) a draft payable on demand drawn by such first mentioned banker upon himself, or upon his agent who is a banker, whether payable at the head office of his bank or of such agent,

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

- (2) The provisions of sub-section (1) shall *mutatis mutandis* also apply to any document which—
 - (a) was issued on behalf of the Government;
 - (b) is drawn upon or addressed to a servant of the Government (hereinafter in this section called the drawee); and
 - (c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a banker;

as if the said document were a cheque and as if the drawee were a banker and the Government his customer.

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

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

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

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

86. Negotiability of documents referred to in section 83, 84 and 85

The provisions of sections 83, 84 and 85 shall not make negotiable any document which, apart from them, is not negotiable.

[Added by P.51/1964]

Part XV – Promissory notes

87. Promissory note defined

- (1) A note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.
- (2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is endorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

88. Delivery necessary

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

89. Joint and several notes

- (1) A note may be made by two or more makers and they may be liable thereon jointly or jointly and severally according to its tenor.
- (2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.

90. Note payable on demand

- (1) If a note payable on demand has been indorsed it must be presented for payment within a reasonable time of the indorsement, and if it is not so presented the indorser is discharged.
- (2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and the facts of the particular case.

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

91. Presentment of note for payment

- (1) If a note is in the body of it made payable at a particular place it must be presented for payment at that place in order to render the maker liable unless the particular place mentioned is the place of business of the payee and the note remains in his hands.
- (2) In no other case is presentment for payment necessary in order to render the maker liable.
- (3) Presentment for payment is necessary in order to render the indorser of a note liable.
- (4) If a note is in the body of it made payable at a particular place presentment at that place is necessary in order to render an indorser liable:

Provided that its place of payment is indicated by way of memorandum only presentment at that place is sufficient to render the indorser liable:

And provided further that presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

92. Liability of maker

The maker of a note by making it—

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

93. Application to notes of provisions relating to bills

- (1) Subject to the provisions in this Part and except as by this section provided the provisions of this Act relating to bills of exchange apply with the necessary modifications to notes.
- (2) In applying those provisions the maker of a note shall be deemed to correspond with, the acceptor of a bill and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.
- (3) The following provisions as to bills do not apply to notes, namely, the provisions relating to—
 - (a) presentment for acceptance;
 - (b) acceptance;
 - (c) acceptance *supra* protest;
 - (d) bills in a set.

Part XVI – Supplementary

94. Good faith

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

95. Signature

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

96. Computation of time

If the reasonable or other time limited for doing any act or thing is by this Act reasonable to be less than four days, non-business days are excluded in reckoning such time.

97. When noting equivalent to protest

If a bill or note is required to be protested within a specified time or before some further proceeding is taken it is sufficient for the purpose of this Act to the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended at any time thereafter as of the date of the noting.

98. Protest when notary not accessible

- (1) If a dishonoured bill or note is authorised or required to be protested and the services or a notary cannot be obtained at the place where the bill is dishonoured, any landowner or householder of the place may in the presence of two witnesses give a certificate signed by them attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.
- (2) The form given in the schedule to this Act may be used with necessary modifications and if used shall be sufficient.

99. Dividend warrants and coupon for interest may be crossed

The provisions of this Act as to crossed cheques shall apply to a warrant for payment of a dividend to a coupon for payment of interest and to postal or money orders.

100. Laws not to be affected by this Act

Nothing in this Act shall affect the provisions of or in any way restrict the—

- (a) Stamp Duties Act or any law for the time being in force relating to the revenue;
- (b) Banks Act 2/1893 and any amendment thereof;
- (c) laws relating to companies;
- (d) procedure and practice in regard to the granting of provisional sentence in judicial proceedings.

Schedule

Form of protest which may be used when the services of a notary cannot be obtained

Know all men that I, A.B., landowner or householder of _____, in the district of _____, Swaziland at the request of C.D. there being no notary public available did on the _____ day of _____, 20____, at _____ demand payment (or acceptance) of the bill of exchange hereunder written from E.F., to which demand he made answer (*state answer if any*) wherefore I now in the presence of G.H. and J.K. do protest the said bill of exchange.

A.B.

Witnesses—

G.H.

J.K.

N.B. — The bill itself should be annexed or a copy of the bill and all that thereon should be underwritten.