



Tonga

BILLS OF EXCHANGE ACT

1988 Revised Edition



BILLS OF EXCHANGE ACT

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BILLS OF EXCHANGE ACT

Acts Nos. 23 of 1973 and 8 of 1976

AN ACT TO REGULATE BILLS OF EXCHANGE

Commencement [1st June 1974]

1 Short title.

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

PRELIMINARY

2 Interpretation.

In this Act, if not inconsistent with the context,—

“**Acceptance**” means an acceptance completed by delivery or notice;

“**Action**” includes counterclaim and set-off;

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

“**Bankrupt**” includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy;

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

“**Bill**” means bill of exchange, “**note**” means promissory note;

“**Branch**” in regard to a banker includes at the head office of the same banker;

“**Business day**” means any day that is not a non-business day;

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

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

“**Non-business day**” means any Saturday or Sunday or any day mentioned in the First Schedule hereto or proclaimed non-business day, a public holiday or from time to time, by the King in Council;

“**Value**” means valuable consideration.

PART I. – BILLS OF EXCHANGE

FORMS 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:

Provided that an order given by one branch of a banker to the same or to any other branch of the same banker is deemed to be an order given by one person to another.

- (2) An instrument that does not comply with these conditions, or that 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 giving rise to the bill, is unconditional.

- (4) A bill is not invalid by reason that —
 - (a) it is not dated;
 - (b) it does not specify the value given, or that any value has been given, therefor;
 - (c) it does not specify the place where it is drawn or the place where it is payable.

4 Inland and foreign bills.

- (1) An “inland bill” is a bill that is, or on the face of it purports to be,—
 - (a) Both drawn and payable in Tonga; or
 - (b) Drawn in Tonga upon some person resident therein.Any other bill is a “foreign bill”.
- (2) Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

5 How bills may be drawn.

- (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.

6 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 two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

7 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—
 - (a) to two or more payees jointly; or

- (b) in the alternative to one of two, or one or some of several payees; or
 - (c) to the holder of an office for the time being.
- (3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

8 What bills are negotiable.

- (1) Where a bill contains words prohibiting transfer, or indicating an intention that it is not 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 if it is expressed to be so payable, or if the only or the last indorsement thereon is an indorsement in blank.
- (4) 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 is not 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.

9 Sum payable.

- (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—
 - (a) with interest;
 - (b) by stated instalments;
 - (c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;
 - (d) according to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.
- (2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.
- (3) Where a bill is expressed to be payable with interest, unless the instrument provides otherwise, interest runs from the date of the bill, and, if the bill is undated, from the issue thereof.

10 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 demand on presentation; or
 - (b) if no time for payment is expressed therein.
- (2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11 Bill payable at a future time.

- (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 a fixed period after date or sight;
 - (b) on or at 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 a contingency is not a bill, and the happening of the event does not cure the defect at a future time.

12 Omission of date in bill payable after date.

Where a bill expressed to be payable at a fixed period after date is issued undated, or where 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, it shall not be avoided by the insertion of a wrong date, but shall operate and be payable as if the date so inserted had been the true date.

13 Antedating and postdating, bills drawn on a Sunday

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

- (2) A bill is not invalid by reason only that it is antedated or post-dated.
- (3) A bill drawn in the Kingdom of Tonga and dated on a Sunday is invalid unless it is proved that it was drawn on a weekday and wrongly dated.
- (4) A bill drawn in the Kingdom of Tonga on a Sunday, which is undated or dated on a weekday, shall be unenforceable by any person who has notice of its having been drawn on a Sunday.
- (5) Subject to the provisions of section 71, a bill drawn in a place other than the Kingdom of Tonga is not invalid by reason only of its having been drawn on or bearing a date on a Sunday.

14 Computation of time of payment.

Where a bill is not payable on demand, the day on which it falls due is determined as follows:

- (a) 3 days (called “days of grace”) are, in every case where the bill itself does not provide otherwise, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace:
Provided that when the last day of grace is a non-business day the bill is due and payable on the next following business day;
- (b) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.
- (c) Where a bill is payable at a fixed period after sight, the time begins to run from the date of acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance or for non-delivery;
- (d) The term “month” in a bill means a calendar month.

15 Referee in case of need.

The drawer of a bill and any indorser may insert therein the name of a person 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. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit.

16 Optional stipulations by drawer or indorser.

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

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

17 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 is sufficient;
 - (b) it must not state that the drawee will perform his promise by any other means than the payment of money.
- (3) An acceptance executed in the Kingdom of Tonga which is dated on a Sunday is invalid unless it is proved that it was executed on a weekday and wrongly dated.
- (4) An acceptance executed in the Kingdom of Tonga on a Sunday, which is undated or dated on a weekday, shall be unenforceable by any person who has notice of its having been executed on a Sunday.
- (5) Subject to the provisions of section 71, an acceptance executed in a place other than in the Kingdom of Tonga is not invalid by reason only of its having been executed on or dated on a Sunday.

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

19 General and qualified acceptances.

- (1) An acceptance is either (a) general, or (b) qualified.
- (2) A general acceptance assents without qualification to the order of the drawer: a qualified acceptance in express terms varies the effect of the bill as drawn.
- (3) 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 a 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 someone or more of the drawees, but not of all.

20 Inchoate instruments

- (1) Where a simple signature on a blank stamped paper is delivered by the signer 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 the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner, where a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.
- (2) 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 a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

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.

21 Delivery.

- (1) Every contract on a bill, whether it is 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 the holder in due course, the delivery—
 - (a) In order to be effectual must 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 the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.
- (4) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CAPACITY AND AUTHORITY OF PARTIES

22 Capacity of parties.

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

Provided that nothing in this section shall enable a corporation to make itself liable as a drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

- (2) Where a bill is drawn or indorsed by a 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.

23 Signature essential to liability.

No person is liable as drawer, indorser, or acceptor of a bill unless he has 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 in that firm.

24 Forged or unauthorised signature.

- (1) Subject to the provisions of this Act, where a signature on a bill is forged, or is 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.
- (2) Nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

25 Signature by procuration.

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

26 Person signing as agent or representative.

- (1) Where 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; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.
- (2) In determining whether a signature on a bill is that of the principal, or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

THE CONSIDERATION FOR A BILL

27 Value, and holder for value.

- (1) Valuable consideration for a bill may be constituted by—
 - (a) any consideration sufficient to support a simple contract;

- (b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.
- (2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who become parties prior to that time.
- (3) Where 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 amount of the sum for which he has a lien.

28 Accommodation 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.

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

30 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; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

NEGOTIATION OF BILLS**31 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) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have indorsement of the transferor.
- (5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

32 Requisition of a valid indorsement.

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, is sufficient:

Provided that an indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, shall be deemed to be written on the bill itself;

- (b) it must be an indorsement of the entire bill. A partial indorsement – that is to say, an indorsement that purports to transfer to the indorsee a part only of the amount payable, or to transfer the bill to

two or more indorsees severally – does not operate as a negotiation of the bill;

- (c) where 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) where in a bill payable to order the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature;
- (e) where there are 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 either special or in blank; it may also contain terms making it restrictive.

33 Conditional indorsement.

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

34 Indorsement in blank and special indorsement.

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

35 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 is indorsed “Pay D. only”, or “Pay D. for the account of X.”, or “Pay D. or order for collection”.

- (2) A restrictive indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorises him to do so.
- (3) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

36 Negotiation of overdue or dishonoured bill.

- (1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been either restrictively indorsed, or discharged, or discharged by payment or otherwise.
- (2) Where an overdue bill is negotiated, it can be negotiated only 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. What is an unreasonable length of time for this purpose is a question of fact.
- (4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill became overdue.
- (5) Where a bill that 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; but nothing in this subsection shall affect the rights of a holder in due course.

37 Negotiation of bill to party already liable thereon.

Where 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, reissue 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. (*Amended by Act 8 of 1976.*)

38 Rights of the holder.

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

- (a) he may sue on the bill in his own name;

- (b) where 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) where his title is defective,—
 - (i) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
 - (ii) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill. (*Amended by Act 8 of 1976.*)

GENERAL DUTIES OF THE HOLDER

39 When presentation for acceptance is necessary.

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

40 Time for presenting bill payable after sight.

- (1) Subject to the provisions of this Act, where 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 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.

41 Rules as to presentment for acceptance and excuses for nonpresentment.

- (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 to the drawee, or to some person authorised to accept or to 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, in which case presentment may be made to him only;
 - (c) where the drawee is dead, presentment may be made to his executor or administrator;
 - (d) where the drawee is bankrupt, presentment may be made to him or to his assignee;
 - (e) where authorised by agreement or usage, a presentment through the post office is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance,—
 - (a) where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill;
 - (b) where, after the exercise of reasonable diligence, such presentment cannot be effected;
 - (c) where, although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

42 Non-acceptance.

Where 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. If he does not, the holder shall lose his right of recourse against the drawer and indorsers.

43 Dishonour by non-acceptance and its consequences.

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

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

44 Qualified acceptance.

- (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain a general acceptance may treat the bill as dishonoured by non-acceptance.
- (2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. The provisions of this subsection do not apply to a partial acceptance whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.
- (3) Where the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

45 Rules as to presentment for payment.

- (1) Subject to the provisions of this Act, a bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged.
- (2) A bill is duly presented for payment if it is presented in accordance with the following rules:
 - (a) where the bill is not payable on demand, presentment must be made on the day it falls due;
 - (b) where 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 the indorser liable;

In determining what is a reasonable time 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;

- (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 by the exercise of reasonable diligence such person can there be found;
- (d) a bill is presented at the proper place—
 - (i) Where a place of payment is specified in the bill, and the bill is there presented;
 - (ii) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented;
 - (iii) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's, place of business, if known, and if not, at his ordinary residence, if known;
 - (iv) in any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence; (*Substituted by Act 8 of 1976.*)
- (e) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found here, no further presentment to the drawee or acceptor is required;
- (f) Where 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;
- (g) Where the drawee or acceptor of the bill is dead, and no place of payment is specified, presentment must be made to the executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he can be found;
- (h) Where authorised by agreement or usage, presentment through the post office is sufficient.

46 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. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with—

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

47 Dishonour by non-payment.

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

48 Notice of dishonour.

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

Provided that—

- (a) where 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) where 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 has in the meantime been accepted.

49 Rules as to notice of dishonour.

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 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 is his principal or not;
- (c) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers having a right of recourse against the party to whom it is given;
- (d) Where 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 either in writing or by personal communication, and may be given in any terms sufficient to identify the bill, and intimating 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 made valid by verbal communication;
- (h) A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby;
- (i) Where 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;
- (j) Where the drawer or indorser is dead, and the party giving notice is aware of the fact, the notice must be given to an executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he can be found;
- (k) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to his assignee;
- (l) Where there are 2 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 on behalf of the others;
(Amended by Act 8 of 1976.)

- (m) The notice may be given as soon as the bill is dishonoured, and must be given within reasonable time thereafter;
- (n) In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—
 - (i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;
 - (ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and, if there is no such post on that day, then by the next post thereafter;
- (o) Where 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. If he gives 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;
- (p) Where 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 the dishonour;
- (q) Where 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.

50 Excuses for want of notice.

- (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. When the cause of delay ceases to operate the notice must be given with reasonable diligence.
- (2) Notice of dishonour is dispensed with—
 - (a) When, 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 waiver, express or implied, either before the time of giving notice of dishonour has arrived, or after the omission to give due notice;
 - (c) As regards the drawer, in the following cases, namely:

- (i) where the drawer and drawee are the same person;
 - (ii) where the drawee is a fictitious person, or a person not having capacity to contract;
 - (iii) where the drawer is the person to whom the bill is presented for payment;
 - (iv) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;
 - (v) where the drawer has countermanded payment.
- (d) As regards the indorser, in the following cases, 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 and made for his accommodation.

51 Noting or protest of bill.

- (1) Where an inland bill has been dishonoured it may, if the owner thinks fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.
- (2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance and where such a bill, not having been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment, otherwise the drawer and indorsers are discharged.
- (3) Where a bill does not appear on the face of it to be a foreign bill, protest thereof as in case of dishonour is unnecessary.
- (4) A bill that has been protested for non-acceptance may be subsequently protested for non-payment.
- (5) Subject to the provisions of this Act, where a bill is noted or protested it must be noted within 2 days after its dishonour. (*Amended by Act 8 of 1976.*)
- (6) Where a bill has been duly noted, the protest may be subsequently extended so as to take effect from the date of the noting.

- (7) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.
- (8) A bill must be protested as the place where it is dishonoured:
Provided that—
 - (a) where 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; and
 - (b) when 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 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.
- (9) 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, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.
- (10) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or on written particulars thereof.
- (11) Protest is dispensed with by any circumstance that would dispense with notice of dishonour.
- (12) 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. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52 Duties of holder as regards drawee or acceptor.

- (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.
- (2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to the effect, is not discharged by the omission to present the bill for payment on the day that it matures.

- (3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.
- (4) When the holder of a bill presents it for payment, he shall exhibit the bill to the person whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES

53 Funds in hands of the drawee.

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

54 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 validity of his indorsement.

55 Liability of drawer or indorser.

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

- (a) engages that on due presentation it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken;
- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill, by indorsing it,—

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent indorser who is compelled

- to pay it, provided that the requisite proceedings on dishonour are duly taken;
- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;
 - (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill. and that he had then a good title thereto.

56 Stranger signing bill liable as indorser.

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

57 Measure of damages against parties to dishonoured bill.

Where 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 from the time of presentment for payment from the maturity of the bill in any other case;
 - (iii) the expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest;
- (b) in the case of a bill that 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) where by this Act interest may be recovered as damages, such interest may, if justice requires, it, be withheld wholly or in part, and, where a bill is expected 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.

58 Transferor and transferee by delivery.

- (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a “transferor by delivery”.
- (2) A transferor by delivery is not liable on the instrument.
- (3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGE OF BILL**59 Payment in due course.**

- (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.
- (2) “Payment in due course” means payment to the holder of the bill made at or after the maturity thereof in good faith and without notice that the holder's title is defective.
- (3) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged: but
 - (a) where a bill payable to or the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not reissue the bill;
 - (b) where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.
- (4) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

60 Where acceptor the holder at maturity.

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

61 Holder may waive his rights.

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

discharged. The renunciation must be in writing, 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 any such renunciation.

62 Cancellation.

- (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. *(Amended by Act 8 of 1976.)*
- (2) Any party liable on a bill may in like manner be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature has been cancelled is also discharged. *(Amended by Act 8 of 1976.)*
- (3) A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but 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) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers:

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

- (2) In particular the following alternatives are material, namely, any alteration of the date, the sum payable, the time of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR

64 Acceptance for honour supra protest.

- (1) Where a bill of exchange has been protested or dishonoured 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 on 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; and
 - (b) be signed by the acceptor for honour.
- (4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.
- (5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the 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 his acceptance, if it is not paid by the drawee, provided that 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 Presentation to acceptor for honour.

- (1) Where 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) Where 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 where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded for presentment to him not later than the day following its maturity.
- (3) Delay in presentment, or non-presentment, is excused by any circumstances that would excuse delay in presentment for payment, or non-presentment for payment.
- (4) Where a bill is dishonoured by the acceptor for honour it must be protested for non-payment by him.

67 Payment for honour supra protest.

- (1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party liable thereon, or for the honour of the person on whose account the bill is drawn.
- (2) Where 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 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 may form 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) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for and succeeds to both the rights and duties of the holder, as regards the party for whose honour he pays and all parties liable to that party.
- (6) 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 deliver them up on demand he shall be liable to the payer for honour in damages.
- (7) Where the holder of a bill refuses to receive payment supra protest he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST BILLS

68 Holder's right to duplicate of lost bill.

- (1) Where a bill has been 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 security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost is found again.
- (2) If the drawer, on request as aforesaid, 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, the Court of a Judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

BILL IN A SET

70 Rules as to set.

- (1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts the whole of the parts constitute one bill.
- (2) Where the 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) Where 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; but nothing in this subsection 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.
- (5) 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 part as if it were a separate bill.

- (6) Where the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course he is liable to the holder thereof.
- (7) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

CONFLICT OF LAWS

71 Law governing contracts contained in a bill.

Where 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 the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is in each case determined by the law of the place where the contract was made;

Provided that—

- (i) where a bill is issued out of Tonga 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 Tonga conforms, as regards requisites in form, to the law of Tonga, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Tonga;
- (b) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill is determined by the law of the place where such contract was made;

Provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of Tonga.

- (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) Where a bill is drawn out of but is payable in Tonga and the sum payable is not expressed in the currency of Tonga, 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 date the bill is payable;

- (e) Where 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 II. – CHEQUES ON A BANK

72 “Cheque” defined.

- (1) A cheque is a bill of exchange drawn on a banker payable on demand.
- (2) Except as otherwise provided in this Part of this Act, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

73 Presentment of cheques for payment.

Subject to the provisions of this Act,—

- (a) Where a cheque is not presented for payment within a reasonable time after its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between himself 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 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) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case;
- (c) The holder of such cheque as 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 shall be entitled to recover the amount from him.

74 Revocation of banker's authority.

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

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

CROSSED CHEQUES

75 General and special crossings defined.

- (1) Where a cheque bears across its face an addition of—
 - (a) the words “and company”, or “bank”, or any abbreviation thereof, between the 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) Where a cheque bears across its face an addition of the name of a banker, either with or without the words “Not negotiable”, that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

76 Crossing by drawer or after issue.

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

77 Crossing to be deemed a material part of cheque.

A crossing authorised by this Act is a material part of the cheque, and no person may obliterate or, except as authorised by this Act, add to or alter the crossing.

78 Duties of banker as to crossed cheque.

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

- (2) Where the banker on whom a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally, otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
- (3) Where a cheque presented for payment 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 Effect of the words “Not negotiable”.

Where a person takes a crossed cheque bearing 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.

80 Application to other instruments.

The provisions of sections 75 to 79 of this Act, so far as applicable, have effect in relation to any instrument (other than a cheque) drawn by a customer on his banker, which though not a bill of exchange, is intended to enable a person to obtain payment from the banker of the sum mentioned in the instrument.

PROTECTION OF DRAWER, DRAWEE AND COLLECTING BANK

81 Protection of drawee and drawer where cheque bears a forged indorsement.

- (1) Where a banker on whom a cheque is drawn pays it in good faith and in the ordinary course of business that banker, and, if the cheque came 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 in due course and to the true owner thereof, notwithstanding that the indorsement of the payee or of any subsequent indorsement has been forged or made without the authority of the person whose authority it purports to be.

- (2) In particular, a banker is deemed not to have acted in the ordinary course of business where—
 - (a) he pays a cheque crossed generally to a person other than a banker; or
 - (b) he pays a cheque crossed specially to a person other than the banker to whom it is crossed or to his agent for collection being a banker; or
 - (c) he acts with negligence when he pays a cheque.

82 Protection of bankers paying unindorsed or irregularly indorsed cheques.

- (1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed, he shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in indorsement, and he shall be deemed to have paid it in due course.
- (2) Where a banker in good faith and in the ordinary course of business pays any instrument issued by a customer of his which, though not a bill of exchange, is intended to enable a person to obtain payment from him of the sum mentioned in the document, he shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment shall discharge the instrument.

83 Rights of bankers collecting cheques not indorsed by holders.

A banker who gives value for, or has a lien on, a cheque payable to order which the holder delivers to him for collection without indorsing it shall have such rights (if any) as he would have had if, upon delivery, the holder had indorsed it in blank.

84 Unindorsed cheques as evidence of payment.

An unindorsed cheque which appears to have been paid by a banker on whom it is drawn shall, in the absence of proof to the contrary, be sufficient evidence of the receipt by the payee of the sum payable by the cheque.

85 Protection of bankers collecting payment of cheques.

- (1) Where a banker in good faith and without negligence—
 - (a) receives payment for a customer of an instrument to which this section applies;

- (b) having credited a customer's account with the amount of any such instrument receives payment thereof for himself—

and the customer has no title, or a defective title, to the instrument, the banker shall not incur any liability to the true owner of the instrument by reason only of having received payment thereof.

- (2) This section applies to cheques and to any instrument issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the instrument.
- (3) A banker shall not be treated for the purposes of this section as having been negligent by reason only of his failure to concern himself with the absence of, or irregularity in, indorsement of an instrument.

PART III. – PROMISSORY NOTES

86 “Promissory note” defined.

- (1) A promissory 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 indorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.
- (4) A note that is, or on the face of it purports to be, both made and payable in Tonga is an inland note; any other note is a foreign note.

87 Delivery necessary.

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

88 Joint and several notes.

- (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, notes. 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.

89 Note payable on demand.

- (1) Where a note payable on demand is indorsed, it must be presented for payment within a reasonable time of the indorsement. 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) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purposes 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.

90 Presentment of note for payment.

- (1) Where a promissory 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; but in any other case presentment for payment is not necessary in order to render the maker liable.
- (2) Presentment for payment is necessary in order to render the indorser of a note liable.
- (3) Where 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; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

91 Liability of maker.

The maker of a promissory 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.

92 Application of Part I to notes.

- (1) Subject to the provisions in this Part of this Act, and except as provided by this section, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.
- (2) In applying these 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, provisions relating to—
 - (a) presentment for acceptance;
 - (b) acceptance;
 - (c) acceptance supra protest;
 - (d) bills in a set.
- (4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART IV. – MISCELLANEOUS

93 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.

94 Signature.

- (1) Where 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.
- (2) Where a corporation makes any instrument or writing required by this Act to be signed, it is sufficient if the instrument or writing is sealed with the corporate seal.
- (3) Nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

95 Computation.

Where by this Act the time limited for doing any act or thing is less than 3 days, in reckoning time non-business days are excluded.

96 When noting equivalent to protest.

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that 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 to take effect from the date of the noting.

97 Protest when notary not accessible.

- (1) Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident 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 Second Schedule hereto may be used with necessary modifications, and if used shall be sufficient.

98 Bill drawn at sight to be deemed a bill payable on demand.

Every bill of exchange or promissory note drawn and purporting to be payable at sight or on presentation shall be stamped as and shall for all purposes be deemed to be a bill of exchange or promissory note payable on demand, without any days of grace, any law or custom to the contrary notwithstanding.

99 Saving.

- (1) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.
- (2) Nothing in this Act shall affect—
 - (a) the provisions of the Stamp Duties Act, or any law or enactment for the time being in force relating to the revenue (*Cap. 70*);
 - (b) the provisions of the Companies Act (*Cap. 27*).

100 Contract Act.

Sections 3-7 of the Contract Act shall have no application to bills of exchange and promissory notes.

SCHEDULES

FIRST SCHEDULE

Section 2 – Non-Business Days

1. All days declared Public Holidays in terms of the Public Holidays Act as amended.
(*Cap. 51*)
2. All Sundays.
3. All days on which the bank is not open for business.

SECOND SCHEDULE

Section 97(2) – Protest Where the Services of a Notary Cannot be Obtained

KNOW all men that I, A.B. (householder of in the Kingdom of Tonga, at the request of C.D., there being no notary public available, did on the day of 19 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.

(Signed) A.B.

G.H. Witnesses

J.K.

(N.B.-The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.)