



SAMOA

## BILLS OF EXCHANGE ACT 1976

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“bankrupt” includes a person whose estate is vested in a trustee or assignee under the law in force relating to bankruptcy;

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

“delivery” means transfer of possession, actual or constructive, from 1 person to another;

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

“endorsement” means an endorsement 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;

“value” means valuable consideration.

## **PART 2 BILLS OF EXCHANGE**

### **Division 1 – 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.

**(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 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 herself 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 of the following:

(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 Samoa; or
  - (b) drawn in Samoa 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 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 or her 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 2 or more drawees, whether they are partners or not; but an order addressed to 2 drawees in the alternative, or to 2 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 2 or more payees jointly; or
- (b) in the alternative, to one of 2, 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 endorsement thereon is an endorsement 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 endorsement, is expressed to be payable to the order of a specified person, and not to the person or his or her order, it is nevertheless payable to the person or his or her order at the person's 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 in accordance with the following:

- (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 2, 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 presentation; or

(b) if not time for payment is expressed therein.

(2) Where a bill is accepted or endorsed when it is overdue, the bill is, as regards the acceptor who so accepts, or any endorser who so endorses it, treated 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.

**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 – (1)** Where a bill or an acceptance or any endorsement on a bill is dated, the date is, unless the contrary is proved, taken to be the true date of the drawing, acceptance, or endorsement, as the case may be.

(2) A bill is not invalid by reason only that it is antedated or postdated, or that it bears 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) three 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;
- (b) where a bill is payable at a fixed period after the 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 the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance or for non-delivery;
- (d) the term “month” in a bill means calendar month.

**15. Referee in case of need** – The drawer of a bill and any endorser 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 or she thinks fit.

**16. Optional stipulations by drawer or endorser** – The drawer of a bill, and any endorser, may insert therein an express stipulation:

- (a) negating or limiting his or her own liability to the holder;
- (b) waiving as regards himself or herself 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 or her 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 or her promise by any other means than the payment of money.

**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, 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.

**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 endorser; 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 or she 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 within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose a question of fact:

**PROVIDED THAT** if any such instrument after completion is negotiated to a holder in due course, it is valid and effectual for all purposes in his or her hands, and he or she 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) A contract on a bill, whether it is the drawer's, the acceptor's, or an endorser'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 or she 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 endorsing, 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 or her so as to make them liable to him or her is conclusively presumed.

(4) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or endorser, a valid and unconditional delivery by him or her is presumed until the contrary is proved.

## **Division 2 – 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 enables a corporation to make itself liable as a drawer, acceptor or endorser of a bill unless it is competent to it so to do under the law in force relating to corporations.

(2) Where a bill is drawn or endorsed by a minor or corporation, having no capacity or power to incur liability on a bill, the drawing or endorsement entitled 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, endorser, or acceptor of a bill unless he or she has signed it as such:

**PROVIDED THAT:**

- (a) where a person signs a bill in a trade or assumed name, he or she is liable thereon as if he or she had signed it in his or her 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 within 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 endorse payment of the bill is precluded from setting up the forgery or want of authority.

(2) Nothing in this section affects 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 is so signing was acting within the actual limits of his or her authority.

**26. Person signing as agent or representative** – (1) Where a person signs a bill as drawer, endorser, or acceptor, and adds words to his or her signature indicating that he or she signs for or on behalf of a principal, or in a representative character, he or she is not personally liable thereon; but the mere addition to his or her signature of words describing him or her as an agent, or as filling a representative character, does not exempt him or her 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.

### **Division 3 – 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 became 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 or she is deemed to be

a holder for value to the amount of the sum for which he or she 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 endorser without receiving value therefor, and for the purpose of lending his or her 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 or she 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 or she 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 or she took the bill in good faith and for value, and that at the time the bill was negotiated to him or her, he or she 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 or she 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 or she 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 or her title to a bill through a holder in due course, and who is not himself or herself a party to any fraud or illegality affecting it, has all the rights of 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)** A party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

**(2)** The holder of a bill is *prima facie* deemed to be a holder in due course, but if in 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 the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

#### **Division 4 – Negotiation of Bills**

**31. Negotiation of bill** – (1) A bill is negotiated when it is transferred from 1 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 endorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his or her order transfers it for value without endorsing 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 endorsement of the transferor.

(5) Where a person is under obligation to endorse a bill in a representative capacity, the person may endorse the bill in such terms as to negative personal liability.

**32. Requisition of a valid endorsement** – An endorsement 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 endorser, the simple signature of the endorser on the bill, without additional words, is sufficient: **PROVIDED THAT** an endorsement written on an along, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognised, is taken to be written on the bill itself;
- (b) it must be an endorsement of the entire bill. A partial endorsement, that is to say, an endorsement that purports to transfer to the endorsee a part only of the amount payable or to transfer the bill to 2 or more endorsees severally, does not operate as a negotiation of the bill;
- (c) where a bill is payable to the order of 2 or more payees or endorsees who are not partners, all must

- endorse, unless the one endorsing has authority to endorse for the others;
- (d) where in a bill payable to order the payee or endorsee is wrongly designed, or his or her name is misspelt, he or she may endorse the bill as therein described, adding, if he or she thinks fit, his or her proper signature;
  - (e) where there are 2 or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved;
  - (f) an endorsement may be either special or in blank; it may also contain terms making it restrictive.

**33. Conditional endorsement** – Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.

**34. Endorsement in blank, and special endorsement – (1)**  
An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.

(2) A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provision of this Act relating to a payee applies, with the necessary modifications, to an endorsee under a special endorsement.

(4) Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction pay the bill to or to the order of himself (or herself) or some other person.

**35. Restrictive endorsement – (1)** An endorsement 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 endorsed "Pay D. only", or "Pay D for the account of X", or "Pay D. or order for collection".

(2) A restrictive endorsement gives the endorsee the right to receive payment of the bill, and to sue any party thereto that his

or her endorser could have sued but gives him or her no power to transfer his or her rights as endorsee unless it expressly authorised him or her to do so.

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

**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 endorsed, 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 thenceforward no person who takes it can acquire or give a better title than that which the person from whom he or she took it had.

(3) A bill payable on demand is taken 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 endorsement 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 affects 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 endorser, or to the acceptor, such party may, subject to the provisions of this Act, reissue and further negotiate the bill; but he or she is not entitled to enforce payment of the bill against any intervening party to whom he or she was previously liable.

**38. Rights of the holder** – The rights and powers of the holder of a bill are as follows:

(a) the holder may sue on the bill in his or her own name;



- (b) where he or she is a holder in due course, the holder 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 the holder's title is defective—
  - (i) if the holder negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
  - (ii) if the holder obtains payment of the bill, the person who pays the holder in due course gets a valid discharge for the bill.

### **Division 5 – General Duties of the Holder**

#### **39. When presentment 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 or business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has no time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is executed, and does not discharge the drawer and endorsers.

#### **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 the holder does not do so, the drawer and all endorsers 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.

**41. Rules as to presentment for acceptance, and excuses for non-presentment** – (1) A bill is duly presented for acceptance if it is presented in accordance with the following rules:

- (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 or her behalf, at a reasonable hour on a business day and before the bill is overdue;
  - (b) where a bill is addressed to 2 or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, in which case presentment may be made to him or her only;
  - (c) where the drawee is dead, presentment may be made to his or her executor or administrator;
  - (d) where the drawee is dead, presentment may be made to him or her or to his or her 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 or she does not, the holder shall lose his or her right of recourse against the drawer and endorsers.

**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 an 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 endorsers 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 or she 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 endorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or endorser is discharged from his or her 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 endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his or her dissent to the holder, he or she is treated 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 endorsers 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 endorsement in order to render the endorser 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 or her 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 or her behalf, if by the exercise of reasonable diligence such person can there be found;
- (d) a bill is presented at the proper—
  - (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 or her ordinary residence, if known;
  - (iv) in any other case, if presented to the drawee or acceptor at his or her last known place or business or residence, or wherever he or she can be found;
- (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

there, no further presentment to the drawee or acceptor is required;

- (f) where a bill is drawn upon or accepted by 2 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 or she 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 or her 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 (or herself) and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
- (d) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he or she 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 endorsers 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 endorser, and any drawer or endorser 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 endorser, who, at the time of giving it, is himself or herself liable on the bill;
- (b) notice of dishonour may be given by an agent either in his or her own name or in the name of any party entitled to give notice, whether that party is his or her principal or not;
- (c) where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders

and all prior endorsers having a right of recourse against the party to whom it is give;

- (d) where notice is given by or on behalf of an endorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all endorsers 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) when return of a dishonoured bill to the drawer or an endorser 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 herself or to his or her agent in that behalf;
- (j) where the drawer or endorser 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 or she can be found;
- (k) where the drawer or endorser is bankrupt, notice may be given either to the party himself or herself or to his or her assignee;
- (l) where there are more than 2 drawers or endorsers, who are not partners, notice must be given to each of them, unless 1 of them has authority to receive such notice on behalf of the others;
- (m) the notice may be given as soon as the bill is dishonoured, and must be given within a 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 or she may either himself or herself give notice to the parties liable on the bill, or he or she may give notice to his or her principal. If he or she gives notice to his or her principal, he or she must do so within the same time as if he or she were the holder, and the principal, upon receipt of such notice, has himself or herself 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 or she 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 despite any miscarriage by the Post Office.

**50. Excuses for want of 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 or her 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 endorser 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 is 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 (or herself) and the drawer under no obligation to accept or pay the bill;
  - (v) where the drawer has countermanded payment;
- (d) as regards the endorser, in the following cases, namely:
  - (i) where the drawee is a fictitious person, or a person not having capacity to contract, and the endorser was aware of the fact at the time he or she endorsed the bill;
  - (ii) where the endorser is the person to whom the bill is presented for payment;
  - (iii) where the bill was accepted and made for his or her 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 not or protest any such bill in order to preserve the recourse against the drawer or endorser.

(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 endorsers are discharged.

(3) Where a bill does not appear on the face of it to be a foreign bill, protest thereof as in the 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 on the day of dishonour.

(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 endorsers.

(8) A bill must be protested at 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;
  - (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 of 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 or her 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 that effect, is not discharged by the omission to present the bill for payment on the day 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 or her.

(4) When the holder of a bill presents it for payment, he or she shall exhibit the bill to the person from whom he or she demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

**Division 6 – Liabilities of Parties**

**53. Funds in hands of 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 the 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 or she will pay it according to the tenor of his or her acceptance;
- (b) is precluded from denying to a holder in due course—
  - (i) the existence of the drawer, the genuineness of his or her signature, and his or her 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 endorse, but not the genuineness or validity of his or her endorsement;
  - (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his or her then capacity to endorse, but not the genuineness or validity of his or her endorsement.

**55. Liability of drawer or endorser – (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 or she will compensate the holder or any endorser 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 or her then capacity to endorse.
- (2)** The endorser of a bill, by endorsing it:
- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he or she will compensate the holder or a subsequent endorser 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 endorsements;
  - (c) is precluded from denying to his or her immediate or a subsequent endorsee that the bill was at the time

of its endorsement a valid and subsisting bill, and that he or she had then a good title thereto.

**56. Stranger signing bill liable as endorser** – Where a person signs a bill otherwise than as drawer or acceptor, he or she thereby incurs the liabilities of an endorser 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 is 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 endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser–
  - (i) the amount of the bill;
  - (ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and 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 endorser, and the drawer or an endorser 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 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.

**58. Transferor and transferee by delivery – (1)** Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it he or she 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 or her immediate transferee being a holder for value that the bill is what it purports to be, that he or she has a right to transfer it, and that at the time of transfer he or she is not aware of any fact which renders it valueless.

### **Division 7 – 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) In this section, “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 drawee or an endorser it is not discharged; but

(a) where 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 reissue the bill;

(b) where a bill is paid by an endorser, or where a bill payable to drawer’s order is paid by the drawer, the party paying it is remitted to his or her former rights as regards the acceptor or antecedent parties, and may, if he or she thinks fit, strike out his or her own and subsequent endorsements, and again negotiate the bill.

(4) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

**60. Bank paying on demand draft bearing forged endorsement – (1)** Where a bill payable to order on demand is drawn on a bank, and the bank on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the bank to show that the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be, and

the bank is taken to have paid the bill in due course, although such endorsement has been forged or made without authority.

(2) Where a bank carries on the business of banking at more branches than one, it is, for the purposes of this section, taken to be an independent bank in respect of each of such branches, and draft issued by one of such branches and payable at another is deemed to be a bill.

**61. Where acceptor the holder at maturity** – Where the acceptor of a bill is or becomes the holder of it in his or her own rights, at or after its maturity, the bill is discharged.

**62. Holder may waive his or her rights** – (1) Where the holder of a bill at or after its maturity absolutely and unconditionally renounces his or her 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 affects the rights of a holder in due course without notice of any such renunciation.

**63. Cancellation** – (1) Where a bill is intentionally cancelled by the holder or his or her agent and the cancellation is apparent thereon, the bill is discharged.

(2) A party liable on a bill may in like manner be discharged by the intentional cancellation of his or her signature by the holder or his or her agent. In such case an endorser who would have had a right of recourse against the party whose signature has been cancelled is also discharged.

(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.

**64. 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

or herself made, authorised, or assented to the alteration, and subsequent endorser:

**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 or herself 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 alterations are material, namely, 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.

### **Division 8 – Acceptance and Payment for Honour**

**65. Acceptance for honour supra protest – (1)** Where 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 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.

**66. Liability of acceptor for honour – (1)** The acceptor for honour of a bill by accepting it engages that he or she will, on due presentment, pay the bill according to the tenor of this 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 or she 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 or she has accepted.

**67. 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 or her 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 or her not later than the day following its maturity.

(3) Delay in presentment, or no 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 or her.

**68. 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 2 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 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 or her agent in that behalf, declaring his or her intention to pay the bill for honour, and for whose honour he or she 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 or she pays and all parties liable to that party.

(6) The payer for honour, on paying to the holder that 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 or she shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment supra protest he or she shall lose his or her right of recourse against any party who would have been discharged by such payment.

#### **Division 9 – Lost Bills**

**69. 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 or her another bill of the same tenor, giving security to the drawer if required to indemnify him or her 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 or she may be compelled to do so.

**70. Action on lost bill –** In any action or proceeding upon a bill, the Court or 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.

#### **Division 10 – Bill in a Set**

**71. Rules as to sets – (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 endorses 2 or more parts to different persons, he or she is liable on every such part, and every

endorser subsequent to him or her is liable on the part he or she has himself or herself endorsed as if the said parts were separate bills.

(3) Where 2 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 affects the rights of a person who in due course accepts or pays the part first presented to him or her.

(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 or she 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 or her acceptance to be delivered up to him or her, and that part at maturity is outstanding in hands of a holder in due course, he or she 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.

### **Division 11 – Conflict of Laws**

**72. 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 endorsement, 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 Samoa 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 Samoa conforms, as regards requisites in form, to the law of Samoa, 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 Samoa;
- (b) subject to the provisions of this Act, the interpretation of the drawing endorsement, 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 endorsed in a foreign country the endorsement shall, as regards the payer, be interpreted according to the law of Samoa;
- (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 Samoa and the sum payable is not expressed in the currency of Samoa, 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 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 3**  
**CHEQUES ON A BANK**

**Division 1 – General**

**73. “Cheque” defined – (1)** A cheque is a bill of exchange drawn on a bank, including an international bank licensed under the International Banking Act 2005 payable on demand.

(2) 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.

**74. 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 or herself and the bank to have the cheque paid, and suffers actual damage through the delay, he or she is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he or she 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 banks, 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 bank to the extent of such discharge, and shall be entitled to recover the amount from it.

**75. Revocation of bank's authority** – The duty and authority of a bank to pay a cheque drawn on it by a customer are determined by:

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

### **Division 2 – Crossed Cheques**

**76. General and special crossing defined** – (1) Where a cheque bears across its face an addition of:

- (a) the word “bank” between 2 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 bank, either with or without the words “Not negotiable” that addition constitutes a crossing, and the cheque is crossed specially and to that bank.

**77. 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 “Negotiable”.

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

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, the bank may cross it specially to itself.

**78. 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.

**79. Duties of bank as to crossed cheques – (1)** Where a cheque is crossed specially to more than one bank, except when crossed to an agent for collection being a bank, the bank on whom it is drawn shall refuse payment thereof.

(2) Where the bank on whom a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or if crossed specially otherwise than to the bank to whom it is crossed, or its agent for collection being a bank, it is liable to the true owner of the cheque for any loss he or she 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 bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or if 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 bank, or to the bank to which the cheque is or was crossed, or to its agent for collection being a bank, as the case may be.

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

**81. Effect of the words “Not Negotiable”** – Where a person takes a crossed cheque bearing on it the words “Not negotiable”, the person shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he or she took it had.

**82. Protection of bankers** – (1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on the banker which is not endorsed or is irregularly endorsed, the banker shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, endorsement, and the banker is taken to have paid it in due course.

(2) Where a banker in good faith and in the ordinary course of business pays any such instrument as the following, namely:

- (a) a document issued by a customer of his or her which, though not a bill of exchange, is intended to

enable a person to obtain payment from him or her of the sum mentioned in the document; or

- (b) a draft payable on demand drawn by him or her upon himself or herself whether payable at the head office or some other office of his or her bank,
- (c) the banker shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, endorsement, and the payment shall discharge the instrument.

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

(4) An unendorsed 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.

(5) Where a banker in good faith and without negligence:

- (a) receives payment for a customer of an instrument to which this subsection applies; or
- (b) having credited a customer's account with the amount of any such instrument receives payment thereof for himself or herself,—

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.

(6) Subsection (5) applies to the following instruments, namely:

- (a) cheques;
- (b) any document 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 document;
- (c) any document, not being a bill of exchange, issued by an official in the service of the Government which is intended to enable a person to obtain payment from the Treasury Fund or any other government account under the Public Finance



Management Act 2001 of the sum mentioned in the document;

- (d) any document, not being a bill of exchange, issued by any person or authority which is intended to enable a person to obtain payment from any such account as may be specified in that behalf by order of the Head of State acting on the advice of Cabinet of the sum mentioned in the document;
- (e) any draft payable on demand drawn by a banker upon himself or herself, whether payable at the head office or some other office of his or her bank.

(7) A banker shall not be treated for the purposes of this section as having been negligent by reason only of his or her failure to concern himself or herself with the absence of, or irregularity in, endorsement of an instrument.

(8) The provisions of this Act relating to crossed cheques shall, so far as applicable, have effect in relation to instruments, (other than cheques) to which subsections (5), (6) and (7) apply as they have effect in relation to cheques.

(9) Nothing in the provisions of this section is taken to make negotiable any instrument which, apart from those provisions, is not negotiable.

**83 Branch banks deemed independent banks for certain purposes** – Where a bank carries on the business of banking at more branches than one, it is, for the purposes of sections 76 to 82, taken to be an independent bank in respect of each of such branches.

#### **PART 4 PROMISSORY NOTES**

**84. “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 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.

(4) A note that is, or on the face of it purports to be, both made and payable in Samoa is an inland note; any other note is a foreign note.

**85. Delivery necessary** – A promissory note is incomplete until delivery thereof to the payee or bearer.

**86. Joint and several notes** – (1) A promissory note may be made by 2 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 2 or more persons, it is taken to be their joint and several note.

**87. Note payable on demand** – (1) Where a note payable on demand is endorsed, it must be presented for payment within reasonable time of the endorsement. If it is not so presented, the endorser 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 taken to be overdue, for the purposes of affecting the holder with defects of title of which he or she had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

**88. Presentment of note for payment** – (1) Where a promissory note is in the body of its 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 endorser 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 endorser liable, but when a place of payment is indicated by way of memorandum only, presentment at that place

is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

**89. Liability of maker** – The maker of promissory note, by making it:

- (a) engages that he or she 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 or her then capacity to endorse.

**90. Application of Part 2 to notes** – (1) Subject to this Part, 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 those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser 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 5 MISCELLANEOUS**

**91. Good faith** – A thing is taken 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.

**92. Signature** – (1) Where by this Act any instrument or writing is required to be signed by any person, it is not necessary that he or she should sign it with his or her own hand, but it is sufficient if his or her signature is written thereon by some other person by or under his or her 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 is to be construed as requiring the bill or note of a corporation to be under seal.

**93. Computation of time** – Where by this Act the time limited for doing any act or thing is less than 3 days, in reckoning time, Sundays and bank holidays are excluded.

**94. 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.

**95. Protest when notary not accessible** – (1) Where 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 any, in the presence of 2 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 Schedule 1 may be used with necessary modifications, and if used shall be sufficient.

**96. Bill drawn at sight to be deemed a bill payable on demand** – A bill of exchange or promissory note drawn and purporting to be payable at sight or on presentation shall be stamped as and is, for all purposes, 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.

**97. Repeal and saving** – (1) On the coming into force of this Act, the enactments set out in Schedule 2 cease to form part of the law of Samoa.

(2) 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.

**SCHEDULE 1**  
**Section 95(2)**

**PROTEST WHERE THE SERVICES OF  
NOTARY CANNOT BE OBTAINED**

Know all men that I, A.B. (householder), of .....in Samoa 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 or she 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).*

**SCHEDULE 2**  
**Section 97(1)**

**ENACTMENT REPEALED**

1908, No.15 – The Bills of Exchange Act 1908 (New Zealand)  
1946, No.40 – The Statutes Amendment Act 1946 (New Zealand)  
sections 11 to 14  
1960, No.17 – The Cheques Act 1960 (New Zealand)  
NSR 1960/192 – Cheques Order 1960 (New Zealand)

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
  - (i) “Every” and “any” changed to “a”
  - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
  - (iii) “notwithstanding” changed to “despite”
  - (iv) Numbers in words changed to figures
  - (v) “hereby” and “from time to time” (or “at any time”) removed.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff  
Attorney General of Samoa

*This Act is administered by  
the Ministry of Finance.*

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