

# Bills of Exchange Act 1909

## Act No. 27 of 1909 as amended

This compilation was prepared on 27 December 2011  
taking into account amendments up to Act No. 46 of 2011

### An Act relating to Bills of Exchange, Cheques and Promissory Notes

#### Part I—Preliminary

##### S4 Interpretation of terms

In this Act, unless the context otherwise requires:

**Acceptance** means

an acceptance completed by delivery or notification.

**Action** includes **counter-claim** and set-off.

**Australasia** means Australia, and any Territory, New Zealand, and the Fiji Islands.

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

**Bankrupt** means any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy or insolvency.

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

**Bill** means bill of exchange.

**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.

**Note** means promissory note.

**Person** includes a body of persons whether incorporated or not.

**Value** means valuable consideration.

**Written** includes printed, and  
**writing** includes print.

#### Part II—Bills of exchange

##### Division 1—Form and interpretation

##### S8 Bill of exchange defined

(1) A bill of exchange is an unconditional order in writing, addressed by one

person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, **or** at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

- (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an **unqualified** order to pay, coupled with:
  - (a) an indication of a particular fund out of which the drawee is to re-imburse himself or herself, or a particular account to be debited with the amount; or
  - (b) a **statement of the transaction which gives rise to the bill**; is **unconditional**.
- (4) A bill is **not** invalid by reason:
  - (a) that it is not dated;
  - (b) that it does not specify the value given, or that any value has been given therefor; or
  - (c) that it does not specify the place where it is drawn, or the place where it is payable.

#### **S14** 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 with, by or according to, as the case requires, **any one or more** of the following, namely:
  - (a) interest or bank charges; or
  - (b) stated instalments; or
  - (c) stated instalments, with a provision that upon default in payment of any instalment the whole shall become due; or
  - (d) an indicated rate of exchange, or a rate of exchange to be ascertained as directed by the bill.
- (2) Where **more than one sum** is expressed to be payable in a bill, **the lesser or least**, as the case may be, of the sums so expressed to be payable shall be taken to be the **only sum** ordered to be paid by the bill.
- (3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

#### **S20** 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. (*Eg. Justice*)

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 may think fit.

## **S21 Optional stipulation by drawer or indorser**

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

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

## **S22 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 express that the drawee will perform his or her promise by any other means than the payment of money.

## **S24 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; or
  - (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn; or
  - (c) local, that is to say, an acceptance to pay only at a **particular specified place**; or
  - (d) qualified as to **time**; or
  - (e) the acceptance of some one or more of the drawees, but not of all.

- (3) 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.

## **S25** Inchoate instruments

- (1) Where a simple signature on a blank stamped paper stamped with an impress duty stamp is **delivered** by the signer (payee) in order that it may be converted into a bill (drawer), 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 (drawee) or an indorser.
- (2) And in like manner when a bill is **wanting** in any material particular, the person in **possession** of it has a *prima facie* authority to fill up the omission in any way he or she thinks fit. (*Once completed, it's a contract*)
- (3) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within 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 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.

- (4) For the purposes of subsection (1) of this section, **duty stamp** includes a duty stamp, required, by the law of the State in which the instrument is issued, to be impressed on a bill. (*Postage stamp*)

## **S26** Delivery

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

Provided that where an acceptance is written on a bill, and the drawee gives **notice to** or according to the directions of the person entitled to the bill that he 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 a 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; or

- (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.

But if the bill be 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.

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

## **Division 2—Capacity and authority of parties**

### **S27 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 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 an infant 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.

### **S31 Person signing as agent or in representative capacity**

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

## **Division 3—The consideration for a bill**

### **S32 Value and holder for value**

- (1) Valuable consideration for a bill may be constituted by:
- (a) **any consideration sufficient to support a simple contract**; or
  - (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.
- (3) 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 such time.

- (4) 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 extent of the sum for which he or she has a lien.

### **S35 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.

## **Division 4—Negotiation of bills**

### **S36 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**.
- (2) 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 or her order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition **acquires** the right to have the indorsement of the transferor.
- (5) Where any person is under obligation to indorse a bill in **a representative capacity**, he or she may indorse the bill in such terms as to **negative personal liability**.

## **Division 5—General duties of the holder**

### **S44 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 of business of the drawee, it must be presented for acceptance **before** it can be presented for payment. *(Another neutral address is permitted. If fail to present BOE for acceptance it discharges liability against drawer)*

- (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.

#### **S45 Time for presenting bill payable after sight**

- (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either **present it for acceptance or negotiate it** within a reasonable time. *(If endorsed 'NOT NEGOTIABLE', it can't be further negotiated)*
- (2) If the holder does not do so, the drawer and all indorsers prior to that Holder are **discharged**.
- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill the usage of trade with respect to similar bills, and the facts of the particular case.

#### **S46 Rules as to **presentment for acceptance** and excuses for non-presentment**

- (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:
  - (a) The presentment must be made, **by or on behalf of** the holder, to the drawee or to some person authorized to accept or 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 two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him or her only;
  - (c) Where the drawee is dead, presentment may be made to his or her personal representative;
  - (d) Where the drawee is bankrupt, presentment may be made to him or her or to his or her trustee or assignee;
  - (e) Where authorized 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. (*Bill is treated as dishonoured by NON ACCEPTANCE*)
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured **does not excuse presentment**.

#### **S48 Dishonour by non-acceptance and its consequences**

- (1) A bill is dishonoured by non-acceptance (*by drawee*):
  - (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
  - (b) when 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 indorsers accrues to the holder, and no presentment for payment is necessary.

#### **S50 Rules as to presentment for payment (*Bill MUST be duly presented for payment. If it isn't, liability against drawer & indorser is discharged*)**

- (1) Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged.
- (2) A bill is duly presented for payment which is presented in accordance with the following rules:
  - (a) 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 authorized to receive payment on his or her behalf, at a **reasonable hour** on a **business day**, at the **proper place** as defined in this section, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his or her behalf, if with 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 or her ordinary residence if known;
  - (iv) in any other case, if presented to the drawee or acceptor wherever he or she can be found, or if presented at his or her last known place of business or residence.
- (e) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized 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 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 a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he or she can be found.
- (h) Where authorized by agreement or usage, a presentment through the post office is sufficient.

## **S51 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 expect that the bill would be paid if presented;
- (e) by waiver of presentment, express or implied

## **S52 Dishonour by non-payment**

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

## **S56 Noting or protest of bill**

- (1) Where an inland bill has been dishonoured, it may, if the holder think 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, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged.

Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

- (3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
- (4) Subject to the provisions of this Act, when a bill is noted or protested, it

must be noted within 48 hours after its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

- (5) 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.
- (6) A bill must be protested at the place where it is dishonoured:  
Provided that:
- (a) when 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 not later than the next business day after the day of its return;
  - (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.
- (6) A protest must contain a copy of the bill, and must be signed by the notary or person 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.

## Division 6—Liabilities of parties

### **S59** 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**;  
and
- (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; and
  - (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; and
  - (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

### **S60** Liability of drawer or indorser

- (1) The drawer of a bill, by drawing it:
- (a) engages that on due presentment it shall be **accepted and paid according to its tenor**, and that if it is dishonoured he or she will compensate the holder or any indorser who is compelled to pay it,

provided that the requisite proceedings on dishonour are duly taken; and  
(c) is precluded from denying to a holder in due course the existence of the payee and his or her 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 or she will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken; and
- (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; and
- (d) is precluded from denying to his or her immediate or a subsequent indorsee that the bill was at the time of his or her indorsement a valid and subsisting bill, and that he or she had then a good title thereto.

## **S62 Measure of damages against parties to dishonoured bill**

*(entitlement/authority to claim damages)*

(b) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party

## **Division 7—Discharge of bill**

### **S64 Payment in due course**

(1) A bill is discharged by **payment in due course** by or on behalf of the drawee or acceptor.

***Payment in due course*** means payment made at or after maturity of the bill to the holder thereof in good faith and without notice that his or her title to the bill is defective.

- (2) 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 to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill;
  - (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 or her former rights as regards the acceptor or antecedent parties, and he or she may, if he or she thinks fit, strike out his or her own and subsequent indorsements, and again negotiate the bill.
- (3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

## **S69** 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 made, authorized, 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 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.

(\***S69(2)** *Right of holder to **change** anything on a Bill including **place** of payment*)

## **Division 8—Acceptance and payment for honour**

### **S71** 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 his or her acceptance**, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he 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.

## **Part V—Supplementary**

### **S96** 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

### **S97** 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) In the case of a corporation, where, by this Act, any instrument or writing is

required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

### **S100 Protest when notary not accessible**

- (1) Where a dishonoured bill or note is authorized or required to be protested, any householder or substantial resident of the place where the bill is dishonoured 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 may be used with necessary modifications, and if used shall be sufficient.

## **Second Schedule—Form of protest which may be used**

### Section 100

Know all men that I, A.B. [householder], of \_\_\_\_\_ in the  
State of \_\_\_\_\_, in the Commonwealth of Australia, at the request  
of \_\_\_\_\_ C.D., did on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 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.