

# ORDER IN COUNCIL

IV

ratifying a Projet de Loi

1958

ENTITLED

## The Bills of Exchange (Guernsey) Law, 1958.

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(Registered on the Records of the Island of Guernsey  
on the 22nd day of March, 1958.)

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1958.

# ORDER IN COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 22nd day of March, 1958, before Sir Ambrose James Sherwill, C.B.E., M.C., Bailiff; present :— Sir John Leale, Arthur Falla, William Robert Freake Clark, Esquires, Donald Carey Brock, Esquire, C.B.E., Wilfred John Corbet, Esquire, O.B.E., Théophile Le Messurier Allez, Bertram Guy Blampied, Esquires, Richard Edward Gibson, Esquire, O.B.E., Claude Fortescue Nason, and Henry Robin Bichard, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of February, 1958, ratifying a *Projet de Loi* entitled "The Bills of Exchange (Guernsey) Law, 1958",—the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth :—

# At the Court at Buckingham Palace,

The 19th day of February, 1958.

PRESENT,

## The Queen's Most Excellent Majesty.

LORD PRESIDENT

MR. SANDYS

COMMANDER NOBLE

MR. WALKER-SMITH

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 11th day of February, 1958, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February, 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 18th day of September, 1957, the States of Deliberation at a meeting held on the 11th day of December, 1957, approved a Bill or “Projet de Loi” entitled “The Bills of Exchange (Guernsey) Law, 1958,” which Bill is designed to apply to the Bailiwick of Guernsey, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 7th day of January, 1958, considered the said Bill or “Projet

de Loi," when a resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 22nd day of January, 1958, considered the said Bill or "Projet de Loi," when a resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Bills of Exchange (Guernsey) Law, 1958" and to order that the same shall have the force of law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. AGNEW.

Projet de Loi referred to in the foregoing  
Order in Council.

## PROJET DE LOI

ENTITLED

### **The Bills of Exchange (Guernsey) Law, 1958.**

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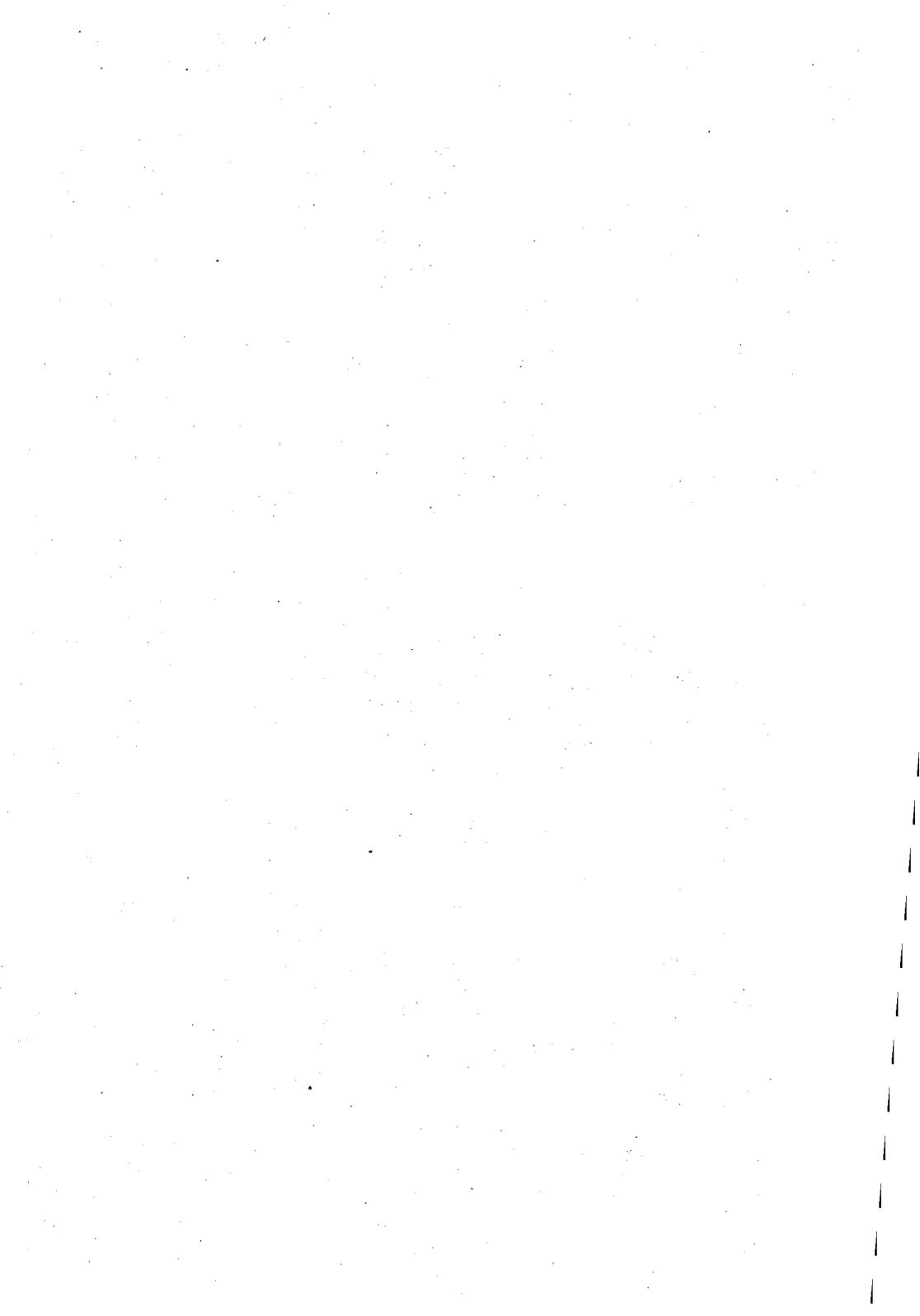
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# PROJET DE LOI

ENTITLED

## **The Bills of Exchange (Guernsey) Law, 1958.**

THE STATES, in pursuance of their Resolution of the eighteenth day of September, nineteen hundred and fifty-seven, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### INTERPRETATION

1. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:— Interpreta-  
tion.

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

“the Bailiwick” means the Bailiwick of Guernsey;

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

“bank holiday” means a day appointed as a bank holiday by Ordinance—

(a) in relation to the Bailiwick excluding the Islands of Alderney and Sark, of the States of Guernsey;

(b) in relation to the Island of Alderney, of the States of Alderney;

- (c) in relation to the Island of Sark, of the Chief Pleas of Sark;
- “bearer” means the person in possession of a bill or note which is payable to bearer;
- “bill” means a bill of exchange;
- “bill of exchange” has the meaning assigned to it by section two of this Law;
- “business day” means a day which is not a non-business day;
- “delivery” means transfer of possession, actual or constructive, from one person to another;
- “holder” means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;
- “in course of transmission by post” has the same meaning as in the Post Office Act, 1953;
- “indorsement” means an indorsement completed by delivery;
- “issue” means the first delivery of a bill or note, complete in form, to a person who takes it as a holder;
- “non-business day” means a Sunday, Good Friday, Christmas Day, a bank holiday or a day appointed as a day of public thanksgiving or public mourning;
- “note” means a promissory note;
- “payment in due course” means payment made at or after the maturity of a bill to the holder thereof in good faith and without notice that his title to the bill is defective and the expression “paid in due course” shall be construed accordingly;
- “promissory note” has the meaning assigned to it by section eighty-six of this Law;

“value” means valuable consideration;

“writing” includes print.

(2) Except in so far as the context otherwise requires, any reference in this Law to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

## PART II

### BILLS OF EXCHANGE

#### *Definition and form*

2. (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the 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.

Definition of  
bill of  
exchange.

(2) An instrument which does not comply with the provisions of subsection (1) of this section 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 an unconditional order within the meaning of this section but an unqualified order to pay coupled with—

- (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount; or
- (b) a statement of the transaction which gives rise to the bill;

is an unconditional order within the meaning of this section.

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

Inland and foreign bills.

3. (1) An inland bill is a bill which is or which on the face of it purports to be—

- (a) both drawn and payable within the British Islands; or
- (b) drawn within the British Islands upon some person resident therein.

(2) A bill which is not an inland bill within the meaning of subsection (1) of this section is a foreign bill.

(3) Unless the contrary appears on the face of a bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

4. (1) A bill may be drawn payable to, or to the order of, the drawer or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may, at his option, treat the instrument as a bill of exchange or as a promissory note.

Address to drawee.

5. (1) The drawee shall be named or otherwise indicated with reasonable certainty in a bill.

(2) A bill may be addressed to two or more drawees whether they are partners or not but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

6. (1) Where a bill is not payable to bearer, the payee shall be named or otherwise indicated with reasonable certainty therein. Certainty required as to payee.

(2) A bill may be made payable to—

(a) two or more payees jointly; or

(b) in the alternative to one of two, or one or some of several payees; or

(c) 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.

7. (1) Where a bill contains words prohibiting transfer or indicating an intention that it shall not be transferable, it shall be valid as between the parties thereto but shall not be negotiable. Negotiable bills.

(2) A negotiable bill may be payable to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable or on which the last or only indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

(5) Where a bill originally or by indorsement is expressed to be payable to the order of a specified person and not to him or his order it is nevertheless payable, at his option, to him or his order.

8. (1) The sum payable by a bill is a sum certain within the meaning of this Law notwithstanding that it is required to be paid— Sum payable.

(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 to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable by a bill is expressed in words and in figures and there is a discrepancy between those words and those figures the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill or if the bill is undated from the issue thereof.

Bill payable  
on demand.

9. (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 it is a bill in which no time for payment is expressed.

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

Bill payable  
at a future  
time.

10. (1) A bill is payable at a determinable future time within the meaning of this Law which is expressed to be payable—

- (a) at a fixed period after date or sight;
- (b) on or at a fixed period after the occurrence of a specified event which is certain to happen although 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.

11. 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:

Omission of date in bill payable after date.

PROVIDED that—

- (i) where the holder in good faith and by mistake inserts a wrong date; or
- (ii) where a wrong date is inserted;

if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby but shall operate and be payable as if the date so inserted had been the true date.

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

Antedating and postdating.

(2) A bill is not invalid by reason only that it is antedated or postdated or that it bears date on a Sunday.

13. (1) Where a bill is not payable on demand, the day on which it falls due shall be determined in accordance with the succeeding provisions of this section.

Computation of time of payment.

(2) Three days, called days of grace, shall, in any case where a bill itself does not otherwise provide, be added to the time of payment as fixed by the bill and the bill shall be due and payable on the last day of grace:

PROVIDED that—

- (i) when the last day of grace falls on a Sunday, Christmas Day, Good Friday or a day appointed as a day of public thanksgiving or public mourning, subject to the provisions of paragraph (ii) of this proviso, the bill shall be due and payable on the next preceding business day;
- (ii) when the last day of grace is a bank holiday or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill shall be due and payable on the next succeeding business day.

(3) Where a bill is payable at a fixed period after date, after sight or after the happening of a specified event, the time of payment shall be determined by excluding the day from which the time is to begin to run and by including the day of payment.

(4) 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 be accepted and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

(5) The expression “month” in any bill means a calendar month.

Referee in  
case of need.

14. (1) The drawer of a bill and any indorser thereof may insert therein the name of a person, called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

(2) It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Stipulations  
by drawer or  
indorser.

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

- (a) negating or limiting his own liability to the holder;
- (b) waiving, as respects himself, any of the holder's duties.

16. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. Meaning of, and requirements as to, acceptance.

(2) An acceptance is invalid unless it complies with the following conditions, that is to say—

- (a) it shall be written on the bill and be signed by the drawee but the mere signature of the drawee without additional words is sufficient;
- (b) it shall not express that the drawee will perform his promise by any means other than the payment of money.

17. (1) A bill may be accepted—

- (a) before it has been signed by the drawer or while it is otherwise incomplete;
- (b) when it is overdue or after it has been dishonoured by a previous refusal to accept or by non-payment.

Time for acceptance.

(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 agreement to the contrary, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

18. (1) An acceptance is either general or qualified. General and qualified acceptances.

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

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

(4) 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;
- (d) qualified as to time;
- (e) the acceptance of one or more but not all of the drawees.

(5) 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.

Inchoate  
instruments.

19. (1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor or an indorser and, in like manner, where a bill is wanting in any material particular the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any instrument to which subsection (1) of this section applies when completed may be enforceable against any person who became a party thereto prior to its completion, it shall be filled up within a reasonable time and strictly in accordance with the authority given and reasonable time for that purpose is a question of fact:

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

20. (1) Every contract on a bill, whether it be that of the drawer, the acceptor or any indorser, is incomplete and revocable until delivery of the instrument in order to give effect thereto: Delivery.

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

(2) As between immediate parties and as respects a remote party, other than a holder in due course, the delivery—

(a) in order to be effectual shall be made either by or under the authority of the party drawing, accepting or indorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only and not for the purpose of transferring the property in the bill.

(3) Where a bill is in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

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

*Capacity and authority of parties*

Capacity of parties.

21. (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 a minor or a 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.

Signature essential to liability.

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

PROVIDED that—

- (i) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name;
- (ii) the signature of the name of a firm on a bill is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorised signature.

23. Subject to the provisions of this Law, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative and no right to retain the bill, to give a discharge therefor or to enforce payment thereof against any party thereto, can be acquired through or under that signature unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority:

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

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

Per procura  
tion  
signatures.

25. (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 capacity 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 capacity does not exempt him from personal liability.

Person sign-  
ing as agent  
or in repre-  
sentative  
capacity.

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

#### *The consideration for a bill*

26. (1) Valuable consideration for a bill may be constituted by—

Value and  
holder for  
value.

(a) any consideration sufficient to support a simple contract;

(b) an antecedent debt or liability;

and 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 respects the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it arising from contract or by implication of law he is deemed to be a holder for value to the extent of the sum for which he has a lien.

Accommodation party.

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

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

Holder in due course.

28. (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, that is to say:—

- (a) he became the holder of it before it was overdue and without notice that it had been previously dishonoured, if such was the fact;
- (b) he took the bill in good faith and for value and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Law where he obtained the bill or the acceptance thereof by fraud, duress, force and fear or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud.

(3) A holder, whether for value or not, who derives his title to a bill through a holder in due course and who is not himself a party to any fraud or illegality affecting it, has all the rights of that

holder in due course as respects the acceptor and all parties to the bill prior to that holder.

29. (1) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value. Presumption of value and good faith.

(2) Every holder of a bill is *primâ 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, force and fear, or illegality, the burden of proof is shifted unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

### *Negotiation*

30. (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. Negotiation.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill and the right to have the indorsement of the transferor.

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

31. (1) The succeeding provisions of this section shall have effect in relation to any indorsement of a bill. Requirements of a valid indorsement.

(2) An indorsement shall be written on the bill itself and shall be signed by the indorser but the mere signature of the indorser on the bill without additional words shall be sufficient.

(3) An indorsement written on an allonge or on a copy of a bill issued or negotiated in a country where copies are recognised is deemed to be written on the bill itself.

(4) An indorsement shall be an indorsement of the entire bill, and a partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the bill to two or more indorsees severally, shall not operate as a negotiation of the bill.

(5) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all those payees or indorsees shall indorse unless the one indorsing has authority to indorse for the others.

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

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

(8) An indorsement may—

(a) be made in blank or special;

(b) contain terms making it restrictive.

Conditional  
indorsement.

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

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

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

(3) The provisions of this Law relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the signature of the indorser a direction to pay the bill to or to the order of himself or some other person.

34. (1) An indorsement is restrictive which prohibits the further negotiation of a 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, where a bill is indorsed "Pay D. only", or "Pay D. for the Account of X.", or "Pay D. or order for collection". Restrictive indorsement.

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued but gives him no power to transfer his rights as indorsee unless it expressly authorises him so to do.

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

35. (1) Where a bill is negotiable in its origin it continues to be negotiable until it has been— Negotiation of overdue or dishonoured bill.

(a) restrictively indorsed; or

(b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated it may only be negotiated 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 of the person from whom he took it.

(3) A bill payable on demand is deemed to be overdue within the meaning of this section when it appears on the face of it to have been in circulation for an unreasonable length of time and what is an unreasonable length of time for that purpose is a question of fact.

(4) Except where an indorsement bears a date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour but nothing in this subsection shall affect the rights of a holder in due course.

Negotiation  
to party  
already  
liable.

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

Rights of  
the holder.

37. The rights and powers of the holder of a bill are as follows, that is to say:—

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

(b) where he is a holder in due course, he holds the bill free from any defect of title of prior

parties and from mere personal defences available to prior parties among themselves and may enforce payment against all parties liable on the bill;

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

*General duties of the holder*

38. (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

When presentment for acceptance is necessary.

(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 shall be presented for acceptance before it may be presented for payment.

(3) Save as provided in subsection (1) and in subsection (2) of this section presentment of a bill for acceptance is not 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.

Time for presenting bill payable after sight.

39. (1) Subject to the provisions of this Law, where a bill payable after sight is negotiated, the holder shall present it for acceptance or negotiate it within a reasonable time and, in default of his so doing, the drawer and all indorsers prior to that holder shall be discharged.

(2) In determining what is a reasonable time for the purposes of subsection (1) 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.

Presentment for acceptance and excuses for non-presentment.

40. (1) A bill is duly presented for acceptance which is presented in accordance with the following provisions, that is to say:—

- (a) the presentment shall be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue;
- (b) where a bill is addressed to two or more drawees who are not partners, presentment shall be made to them all unless one has authority to accept for all when presentment may be made to him only;
- (c) where the drawee is dead, presentment may be made to his personal representative;
- (d) where authorised by agreement or usage, a presentment by post is sufficient.

(2) Presentment in accordance with the provisions of subsection (1) of this section is excused and a bill may be treated as dishonoured by non-acceptance—

- (a) where the drawee is dead or insolvent, 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.

41. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it shall treat it as dishonoured by non-acceptance and, in default of his so doing, the holder shall lose his right of recourse against the drawer and indorsers. Non-acceptance.

42. (1) A bill is dishonoured by non-acceptance— Dishonour by non-acceptance and its consequences.
- (a) when it is duly presented for acceptance and an acceptance as prescribed by this Law 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 Law, 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.

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

(2) Where a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance

or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill: PROVIDED that the provisions of this subsection shall not apply to a partial acceptance whereof due notice has been given.

(3) Where a foreign bill has been accepted as to part, it shall be protested as to the balance.

(4) When the drawer or indorser of a bill receives notice of a qualified acceptance and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

Presentment  
for payment.

44. (1) Subject to the provisions of this Law, a bill shall be duly presented for payment and if it be not so presented the drawer and any indorser shall be discharged.

(2) A bill is duly presented for payment which is presented in accordance with the following provisions, that is to say:—

- (a) where the bill is not payable on demand, presentment shall be made on the day on which it falls due;
- (b) where the bill is payable on demand, then, subject to the provisions of this Law, presentment shall 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.

(3) In determining what is a reasonable time for the purposes of subsection (2) 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.

(4) Presentment of a bill for payment shall be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day and at the proper place to the person designated by the bill as payer or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(5) A bill is presented for payment at the proper place within the meaning of this section—

- (a) where a place of payment is specified in the bill and the bill is presented at that place;
- (b) where no place of payment is specified but the address of the drawee or acceptor is given in the bill and the bill is presented at that address;
- (c) where no place of payment is specified and no address given and the bill is presented at the place of business, if known, of the drawee or acceptor and, if not, at the ordinary residence, if known, of the drawee or acceptor;
- (d) in any other case if presented to the drawee or acceptor wherever he can be found or if presented at his last known place of business or residence.

(6) Where a bill is presented for payment 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.

(7) 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 for payment shall be made to all of those persons.

(8) Where the drawee or acceptor of a bill is dead and no place of payment is specified, presentment for payment shall be made to a personal representative, if any, and if with the exercise of reasonable diligence he can be found.

(9) Where authorised by agreement or usage, a presentment of a bill for payment by post is sufficient.

Delays in  
and excuses  
for non-  
presentment  
for payment.

45. (1) Delay in making presentment for payment is excused where the delay is caused by circumstances beyond the control of the holder and is not imputable to his default, misconduct or negligence:

PROVIDED that when the cause of delay ceases to operate presentment shall be made with reasonable diligence.

(2) Presentment for payment is dispensed with—

(a) where, after the exercise of reasonable diligence, presentment cannot be effected;

(b) where the drawee is a fictitious person;

(c) as respects 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 respects 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 express or implied waiver of presentment.

(3) The fact that the holder has reason to believe that the bill will, on presentment for payment, be dishonoured does not dispense with the necessity for presentment.

46. (1) A bill is dishonoured by non-payment— Dishonour 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.

(2) Subject to the provisions of this Law, where a bill is dishonoured by non-payment an immediate right of recourse against the drawer and indorsers accrues to the holder.

47. Subject to the provisions of this Law, when a bill has been dishonoured by non-acceptance or by non-payment notice of dishonour shall be given to the drawer and each indorser and any drawer or indorser to whom such notice is not given is discharged: Notice to be given of dishonour.

PROVIDED that—

- (i) 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;
- (ii) 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 shall in the meantime have been accepted.

48. (1) Notice of dishonour in order to be valid and effectual shall be given in accordance with the succeeding provisions of this section. Notice of dishonour.

(2) The notice shall be given by or on behalf of the holder or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(3) The notice may be given by an agent in his own name or in the name of any party entitled to give notice whether that party be his principal or not.

(4) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(5) Where notice is given by or on behalf of an indorser entitled to give notice in accordance with the preceding provisions of this section, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(6) The notice may be given in writing or by personal communication and may be given in any terms which sufficiently identify the bill and indicate that the bill has been dishonoured by non-acceptance or non-payment.

(7) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(8) A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication.

(9) A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(10) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

(11) Where the drawer or indorser is dead and the party giving notice knows it, the notice shall be given to a personal representative, if such there be and if with the exercise of reasonable diligence he can be found.

(12) Where there are two or more drawers or indorsers who are not partners, notice shall be given to each of them, unless one of them has authority to receive such notice for the others.

(13) The notice may be given as soon as the bill is dishonoured and shall be given within a reasonable time thereafter.

(14) In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—

(a) where the person giving and the person to receive notice reside in the same place, the notice is given or sent in time to reach the last-mentioned person on the day after the dishonour of the bill;

(b) where the person giving and the person to receive notice reside in different places, the notice is sent on the day after the dishonour of the bill if there be a post at a convenient hour on that day and if there be no such post on that day then by the next post thereafter.

(15) Where a bill when dishonoured is in the hands of an agent, he may himself give notice to the parties liable on the bill or he may give notice to his principal and if he gives notice to his principal he shall do so within the same time as if he were the holder and the principal upon receipt of such notice shall have the same time for giving notice as if the agent had been an independent holder.

(16) Where a party to a bill receives due notice of dishonour, he shall have after the receipt of such notice the same period of time for giving notice to antecedent parties as the holder has after the dishonour.

(17) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage in course of transmission by post.

Delays in  
and excuses  
for not giving  
notice of  
dishonour.

49. (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 is not imputable to his default, misconduct or negligence:

PROVIDED that when the cause of delay ceases to operate the notice shall be given with reasonable diligence.

- (2) Notice of dishonour is dispensed with—
  - (a) where after the exercise of reasonable diligence, notice of dishonour cannot be given to or does not reach the drawer or indorser sought to be charged;
  - (b) by express or implied waiver before the time of giving notice has arrived or after the omission to give due notice;
  - (c) as respects the drawer in the following cases, that is to say—
    - (i) where drawer and drawee are the same person;
    - (ii) where the drawee is a fictitious person or a person not having capacity to contract;
    - (iii) where the drawer is the person to whom the bill is presented for payment;
    - (iv) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill;
    - (v) where the drawer has countermanded payment;

(d) as respects the indorser in the following cases, that is to say—

- (i) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill;
- (ii) where the indorser is the person to whom the bill is presented for payment;
- (iii) where the bill was accepted or made for his accommodation.

50. (1) Where an inland bill has been dishonoured it may, if the holder thinks fit, be noted for non-acceptance or non-payment, as the case may be, but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser. Noting or protest of bill.

(2) Where a bill appearing on the face of it to be a foreign bill has been dishonoured by non-acceptance it shall 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 shall be duly protested for non-payment and if it be not so protested the drawer and indorsers are discharged.

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

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

(5) Subject to the provisions of this Law, when a bill is noted or protested it may be noted on the day of its dishonour and shall be noted not later than the next succeeding business day.

(6) When a bill has been duly noted, the protest may subsequently be extended as of the date of the noting.

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

(8) A bill shall be protested at the place where it is dishonoured:

PROVIDED that—

- (i) where a bill is presented by post and returned dishonoured by post, 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 succeeding business day;
  - (ii) where 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 shall 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 shall contain a copy of the bill, be signed by the notary making it and specify—
- (a) the person at whose request the bill is protested;
  - (b) the place and date of protest, the cause or reason for protesting the bill, the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.
- (10) Where a bill is lost, or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or on written particulars thereof.

(11) Protest is dispensed with by any circumstance which 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 is not imputable to his default, misconduct or negligence:

PROVIDED that when the cause of delay ceases to operate the bill shall be noted or protested with reasonable diligence.

51. (1) Where a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

Duties of holder as respects drawee or acceptor.

(2) Where 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 on which it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it or that notice of dishonour should be given to him.

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

### *Liability of parties*

52. 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 Law is not liable on the instrument.

Funds in hands of drawee.

Liability of  
acceptor.

53. The acceptor of a bill by accepting it—

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

Liability of  
drawer and  
indorser.

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

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

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

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

- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the signature of the drawer and of all previous indorsements;
- (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill and that he had then a good title thereto.

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

Stranger signing bill liable as indorser.

56. (1) Where a bill is dishonoured the measure of damages, which shall be deemed to be liquidated damages, shall be as follows, that is to say, the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor and an indorser who has been compelled to pay the bill may recover from the acceptor, from the drawer or from a prior indorser—

Measure of damages against parties to dishonoured bill.

- (a) the amount of the bill;
- (b) 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;
- (c) the expenses of noting or, when protest is necessary and the protest has been extended, the expenses of protest.

(2) In respect of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Law 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.

Transferor  
by delivery.

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

(2) A transferor by delivery is not liable on the instrument.

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

### *Discharge of bill*

Payment in  
due course.

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

(2) Subject to the provisions of this Law, 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 reissue the bill;
- (b) where a bill is paid by an indorser or where a bill payable to the order of the drawer is paid by the drawer, the party paying it is remitted to his former rights as respects the acceptor or antecedent parties and he may,

if he thinks fit, strike out his 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.

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

Banker paying demand draft whereon indorsement is forged.

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

Acceptor the holder at maturity.

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

Express waiver.

(2) A renunciation under and for the purposes of subsection (1) of this section shall be in writing unless the bill is delivered up to the acceptor.

(3) The liability of any party to a bill may in like manner be renounced by the holder before, at or after its maturity.

(4) Nothing in this section contained shall affect the rights of a holder in due course without notice of the renunciation.

62. (1) Where a bill is intentionally cancelled by the holder or his agent and the cancellation is apparent thereon the bill is discharged.

Cancellation.

(2) Any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent and in such case any indorser who would have had a right of recourse against the party whose signature is cancelled is 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.

Alteration  
of bill.

63. (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised or assented to the alteration and subsequent indorsers :

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

(2) In particular the following alterations are material, that is to say, 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 assent of the acceptor.

*Acceptance and payment for honour*

Acceptance  
for honour  
suprà protest.

64. (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 *suprà protest* for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour *suprà protest* in order to be valid shall—

(a) be written on the bill and indicate that it is an acceptance for honour;

(b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, such acceptance is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honour.

65. (1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance if it is not paid by the drawee provided it has been duly presented for payment and protested for non-payment and that he receives notice of those facts.

Liability of acceptor for honour.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

66. (1) Where a dishonoured bill has been accepted for honour *suprà protest* or contains a reference in case of need, that bill shall be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.

Presentment to acceptor for honour.

(2) Where the address of the acceptor for honour is in the place where the bill is protested for non-payment, the bill shall be presented to him not later than the day next 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 shall be forwarded not later than the day next following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonoured by the acceptor for honour it shall be protested for non-payment by him.

Payment for  
honour *suprà*  
protest.

67. (1) Where a bill has been protested for non-payment, any person may intervene and pay it *suprà* protest for the honour of any party liable thereon or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *suprà* protest in order to operate as such and not as a mere voluntary payment shall be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour shall be founded on a declaration made by the payer for honour or his agent in that behalf declaring his intention to pay the bill for honour and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as respects the party for whose honour he pays and all parties liable to that party.

(6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest and if the holder does not on demand deliver them up he shall be liable to the payer for honour in damages.

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

### *Lost instruments*

68. (1) Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found.

Holder's  
right to  
duplicate of  
lost bill.

(2) If the drawer on request as aforesaid refuses to give such duplicate bill he may be compelled to do so.

69. In any action or proceeding upon a bill, the Court may order that the loss of the instrument shall not be set up provided that an indemnity be given to the satisfaction of the Court against the claims of any other person upon the instrument in question.

Action on  
lost bill.

*Bill in a set*

Rules as to  
sets.

70. (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 constitutes one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part and shall be written on one part only.

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

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

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

*Conflict of laws*

71. (1) 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 in accordance with the succeeding provisions of this section. Rules where laws conflict.

(2) The validity of a bill as respects requirements as to form is determined by the law of the place of issue and the validity as respects requirements as to form of the supervening contracts, such as acceptance, indorsement or acceptance *suprà* protest, is determined by the law of the place where such contract was made:

PROVIDED that—

- (i) where a bill is issued out of the Bailiwick 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 the Bailiwick conforms as respects requirements as to form to the law of the Bailiwick, 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 the Bailiwick.

(3) Subject to the provisions of this Law, the interpretation of the drawing, indorsement, acceptance or acceptance *suprà* protest of a bill is determined by the law of the place where such contract is made:

PROVIDED that where an inland bill is indorsed in a foreign country the indorsement shall as respects the payer be interpreted according to the law of the Bailiwick.

(4) The duties of the holder with respect to presentment for acceptance or payment and the neces-

sity 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.

(5) Where a bill is drawn out of but is payable in the Bailiwick and the sum payable is not expressed in the currency of the Bailiwick, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(6) 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 III

### CHEQUES

Definition of  
cheque.

72. (1) A cheque is a bill of exchange drawn on a banker and payable on demand.

(2) Except as otherwise provided in this Part of this Law, the provisions of this Law applicable to a bill of exchange payable on demand apply to a cheque.

Presentment  
of cheque for  
payment.

73. (1) Subject to the provisions of this Law—

(a) where a cheque is not presented for payment within a reasonable time of 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 him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say,

to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid;

- (b) the holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

(2) In determining what is a reasonable time for the purposes of subsection (1) of this section regard shall be had to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case.

74. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by— Revocation of banker's authority.

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

75. (1) Where a cheque bears across its face an addition of— General and special crossings.

- (a) the words "and company" or any abbreviation thereof between two parallel transverse lines, with or without the words "not negotiable"; or  
(b) two parallel transverse lines simply, with or without the words "not negotiable";

that addition constitutes a crossing and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, with or without the words "not negotiable", that addition constitutes a crossing and the cheque is crossed specially and to that banker.

Crossing by  
drawer or  
after issue.

76. (1) A cheque may be crossed generally or specially by the drawer.

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

(3) Where a cheque is crossed generally, the holder may cross it specially.

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

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

(6) Where an uncrossed cheque or a cheque crossed generally is sent to a banker for collection, he may cross it specially to himself.

Crossing a  
material part  
of cheque.

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

Duties of  
banker as to  
crossed  
cheques.

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

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid:

PROVIDED that where a cheque is presented for payment which does not at the time of presentment

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

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

Protection to banker and drawer where cheque is crossed.

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

Effect of crossing on holder.

81. (1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him which is not indorsed or is irregularly indorsed, he does not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and he is deemed to have paid it in due course.

Protection of bankers paying unindorsed or irregularly indorsed cheques, etc.

(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 which, though not a bill of exchange, is intended to enable a person to obtain payment from him of the sum mentioned in the document;
- (b) a draft payable on demand drawn by him upon himself, whether payable at the head office or some other office of his bank;

he does not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment discharges the instrument.

(3) A draft or order drawn upon a banker for a sum of money payable to order on demand, which shall, when presented for payment, purport to be indorsed by the person to whom the same shall be drawn payable, shall be a sufficient authority to such banker to pay the amount of such draft or order to the bearer thereof, and it shall not be incumbent on such banker to prove that such indorsement, or any subsequent indorsement, was made by or under the direction or authority of the person to whom the said draft or order was or is made payable either by the drawer or any indorser thereof.

Rights of  
bankers  
collecting  
cheques not  
indorsed by  
holders.

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

Unindorsed  
cheques as  
evidence of  
payment.

83. An unindorsed cheque which appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum payable by the cheque.

84. (1) Where a banker, in good faith and without negligence,—

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

Protection of bankers collecting payment of cheques, etc.

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

(2) This section 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 issued by a public officer which is intended to enable a person to obtain payment from the Paymaster General or the Queen's and Lord Treasurer's Remembrancer of the sum mentioned in the document but is not a bill of exchange;
- (d) any draft payable on demand drawn by a banker upon himself, whether payable at the head office or some other office of his bank.

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

85. (1) The provisions of this Law relating to crossed cheques shall, so far as applicable, have effect in relation to instruments (other than cheques) to

Application of certain provisions to instruments not being bills of exchange.

which the last foregoing section applies as they have effect in relation to cheques.

(2) Nothing in the last four preceding sections of this Law shall make negotiable any instrument which, apart from them, is not negotiable.

## PART IV

### PROMISSORY NOTES

Definition of  
promissory  
note.

86. (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 the order of the maker is not a note within the meaning of this section unless and until it is indorsed by the maker.

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

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note.

(5) A note which is not an inland note within the meaning of subsection (4) of this section is a foreign note.

Delivery  
necessary.

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

88. (1) A promissory note may be made by two or more makers and they may be liable thereon jointly or jointly and severally according to its tenor. Joint and several notes.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

89. (1) Where a note payable on demand has been indorsed, it shall be presented for payment within a reasonable time of the indorsement and if it be not so presented the indorser is discharged. Note payable on demand.

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

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

90. (1) Where a promissory note is in the body of it made payable at a particular place, it shall 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. Presentment of note for payment.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable but when a place of payment is indicated by way of

memorandum only presentment at that place is sufficient to render the indorser liable but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

91. The maker of a promissory note by making it—

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

Application of Part II to notes.

92. (1) Subject to the provisions of this Part of this Law, the provisions of this Law relating to bills of exchange shall 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 indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to the order of the drawer.

(3) The following provisions relating to bills shall not apply to notes, that is to say, the provisions relating to—

- (a) presentment for acceptance;
- (b) acceptance;
- (c) acceptance *suprà* protest;
- (d) bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

## PART V

## GENERAL

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

94. (1) Where by this Law any instrument or Signature. writing is required to be signed by any person, it is not necessary that he should sign it with his own hand but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where by this Law any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

(3) Nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

95. Where by this Law the time limited for doing Computation of time. any act or thing is less than three days, in reckoning time, non-business days are excluded.

96. For the purposes of this Law, where a bill or When noting equivalent to protest. 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 as of the date of the noting.

97. (1) Where a dishonoured bill or note is Protest when notary not available. authorised or required to be protested and the services

of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill or note and the certificate shall in all respects operate as if it were a formal protest of the bill or note.

(2) The form of protest set out in the Schedule to this Law may be used with necessary modifications and if used shall be sufficient.

Dividend  
warrants.

98. The provisions of this Law as to crossed cheques shall apply to a warrant for payment of dividend.

## PART VI

### SAVINGS, CITATION AND COMMENCEMENT

Savings.

99. (1) Nothing in this Law contained shall affect the law of insolvency in its application to bills of exchange, promissory notes and cheques.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Law, shall continue to apply to bills of exchange, promissory notes and cheques.

(3) Nothing in this Law shall affect—

- (a) the provisions of the Law entitled “Loi relative aux Droits de Timbre” registered on the sixteenth day of January, nineteen hundred and twenty-two;
- (b) the provisions of the Law entitled “Loi relative aux Droits de Timbre” registered on the thirtieth day of August, nineteen hundred and twenty-two;

- (c) the provisions of the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the twenty-second day of May, eighteen hundred and ninety-four;
- (d) the provisions of the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the twenty-first day of March, nineteen hundred and eight;
- (e) the validity of any usage relating to dividend warrants or the indorsements thereof.

100. This Law may be cited as the Bills of Exchange (Guernsey) Law, 1958, and shall come into force on such day as shall be appointed in that behalf by Ordinance of the States of Guernsey.

Citation and commencement.

#### SCHEDULE Section ninety-seven

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

Know all men that I, A.B. [householder], of \_\_\_\_\_ in the Island of \_\_\_\_\_, at the request of C.D., there being no notary public available, did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at demand payment [or acceptance] of the bill of exchange hereunder written, from E.F., to which demand he made answer [state answer, if any] wherefore I now, in the presence of G.H. and J.K., do protest the said bill of exchange.

(Signed)    A.B.  
                   G.H. } Witnesses.  
                   J.K. }

NOTE

The bill itself should be annexed or a copy of the bill and all that is written thereon should be underwritten.

JAMES E. LE PAGE,

Her Majesty's Greffier.