



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

Vol. 426

CAPE TOWN, 6 DECEMBER 2000

**No. 21846**

KAAPSTAD, 6 DESEMBER 2000

THE PRESIDENCY

DIE PRESIDENSIE

No. 1318.

6 December 2000

No. 1318.

6 Desember 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 56 of 2000: Bills of Exchange Amendment Act, 2000.

No. 56 van 2000: Wisselwysigingswet, 2000.

**GENERAL EXPLANATORY NOTE:**

- [ Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments. 5

(English text signed by the President.)  
(Assented to 29 November 2000.)

# ACT

To amend the Bills of Exchange Act, 1964, so as to provide for—

- the clarification of certain provisions; 10
- the protection of users;
- the accommodation of technological advancements; and
- the reduction of the incidence of fraud: and

to provide for matters incidental thereto.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 34 of 1964, as amended by section 1 of Act 58 of 1977 and section 5 of Act 77 of 1986**

1. Section 1 of the Bills of Exchange Act, 1964 (hereinafter referred to as the principal Act), is hereby amended— 5
  - (a) by the deletion of the definition of “action”;
  - (b) by the substitution for the definition of “banker” of the following definition:

“**[‘banker’ includes] ‘bank’** means a body of persons, whether incorporated or not, **[who carry] that carries** on the business of banking, and includes the South African Reserve Bank contemplated in the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993), and the Post Office Savings Bank as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958);” 10 15
  - (c) by the substitution for the definition of “cheque” of the following definition:

“cheque” means a bill drawn on a **[banker]** bank payable on demand;”
  - (d) by the insertion after the definition of “cheque” of the following definition:

“**‘collecting bank’** means a bank collecting payment of a cheque or other document contemplated in section &” 20
  - (e) by the deletion of the definition of “foreign bill”;
  - (f) by the deletion of the definition of “inland bill”;
  - (g) by the substitution for the definition of “non-business day” of the following definition: 25

“‘non-business day’ means a day contemplated in section [four] 3 of the Public Holidays Act, [1952 (Act No. 5 of 1952)] 994 (Act No. 36 of 1994);”:

- (h) by the substitution for the definition of “note”, used as a noun, of the following definition: “‘note’ [used as a noun] means a promissory note as defined in section 87;” 5
- (i) by the deletion of the definition of “note” used as a verb;
- (j) by the deletion of the definition of “Post Office cheque”;
- (k) by the deletion of the definition of “value”; and
- (l) by the deletion of the definition of “warrant-voucher”. 10

#### Amendment of section 5 of Act 34 of 1964

2. Section 5 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.”. 15

#### Amendment of section 6 of Act 34 of 1964

3. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A bill is payable to bearer if it is expressed to be so payable, or if the only or last endorsement on it is an endorsement in blank, or if it is expressed to be payable to the order of ‘cash’ or to ‘cash or order’.”. 20

#### Repeal of section 13 of Act 34 of 1964

4. Section 13 of the principal Act is hereby repealed.

#### Amendment of section 18 of Act 34 of 1964

5. Section 18 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) If a person places his signature upon [and affixes a stamp to] a blank paper and delivers such paper to any other person 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 [such a stamp will cover], using the said signature for that of the drawer, the acceptor or an endorser.”. 30

#### Amendment of section 19 of Act 34 of 1964

6. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No contract on a bill, whether it be the drawer’s, the acceptor’s, [or] an indorser’s, or that of the signer of an aval, shall be complete and irrevocable, until delivery of the instrument in question in order to conclude such a contract: Provided that if an acceptance or an aval is written on a bill and the drawee or the signer of the aval, as the case may be, gives notice to, or according to the directions of, the person entitled to the bill that he has accepted or signed it, the acceptance or aval then becomes complete and irrevocable.”. 35 40

#### Repeal of section 23 of Act 34 of 1964

7. Section 23 of the principal Act is hereby repealed.

#### Amendment of section 24 of Act 34 of 1964

8. Section 24 of the principal Act is hereby amended by the substitution for the words preceding the proviso to subsection (1) of the following words: 45

“If a person signs a bill as drawer, acceptor or indorser and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative capacity, or if he signs as drawer and the name of the principal appears with his signature, he is not personally liable thereon.”.

#### **Substitution of section 25 of Act 34 of 1964**

5

9. The following section is hereby substituted for section 25 of the principal Act:

##### **“Holder for value**

25. A holder takes a bill for value if he takes it under onerous title.”.

#### **Amendment of section 29 of Act 34 of 1964**

10. Section 29 of the principal Act is hereby amended by the substitution for 10 subsection (4) of the following subsection:

“(4) If the holder of a bill payable to his order transfers it [for **value**] without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the bill indorsed by the transferor.”.

15

#### **Amendment of section 30 of Act 34 of 1964**

11. Section 30 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he [**must**] may, in order to effect a negotiation of the bill, 20 indorse the bill as he is therein described, adding, if he thinks fit, his proper signature.”.

#### **Amendment of section 39 of Act 34 of 1964**

12. Section 39 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph: 25

“(a) if the drawee is dead or insolvent, or is a fictitious or non-existing person or a person not having capacity to contract [**by bill**];”.

#### **Insertion of section 43A in Act 34 of 1964**

13. The following section is hereby inserted in the principal Act after section 43:

##### **“Presentment for payment by bank**

30

43A. (1) A cheque may, provided the requirements of subsection (1), paragraphs (a) and (b) of subsection (2) and subsection (3) of section 43 are met, be presented for payment to the drawee by a collecting bank on behalf of the holder—

(a) at a place designated in the rules of any clearing house of which both 35 the drawee bank and the collecting bank are members;

(b) at a place of payment designated by the drawee bank; or

(c) by means of data transmitted in terms of an agreement to which both 40 the drawee bank and the collecting bank are party by, or on behalf of, the collecting bank to the drawee bank, identifying the cheque with reasonable certainty.

(2) For the purpose of paragraph (c) of subsection (1), a cheque is deemed to be identified with reasonable certainty if—

(a) the sum ordered to be paid by the cheque;

(b) the number of the cheque, if any; 45

(c) the name and number of the account against which the cheque is drawn; and

(d) the drawee bank,

are specified or are readily ascertainable by the drawee bank from the data transmitted by or on behalf of the collecting bank,

(3) Where a cheque is presented for payment in terms of this section, the drawee shall not be relieved of any liability to which the drawee would have been subject in relation to the cheque if it had been presented by being exhibited to the drawee. “.”

**Amendment of section 49 of Act 34 of 1964, as amended by section 3 of Act 58 of 1977**

14. Section 49 of the principal Act is hereby amended—

(a) by the deletion of subsection (1);

(b) by the substitution for subsection (1A) of the following subsection:

“(1 A) (a) If [**an inland**] a bill has been dishonored by non-acceptance or non-payment it may be protested for non-acceptance or non-payment, as the case may be, but it shall not be necessary so to protest any such bill to hold the drawer or any indorser liable.

(b) If [**such**] a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance it may be protested for non-payment. and in such event no further presentment for payment to, or demand on, the drawee is necessary.”;

(c) by the deletion of subsection (8); and

(d) by the substitution for the proviso to subsection (9) of the following proviso:

“Provided that if the cause of delay ceases to operate, the bill must be protested [**when necessary**] with reasonable diligence.”.

**Amendment of section 50 of Act 34 of 1964**

15. Section 50 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Subject to the provisions of section 43A, when a holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid, the holder shall forthwith deliver it up to the party paying it.”.

**Substitution of section 54 of Act 34 of 1964**

16. The following section is hereby substituted for section 54 of the principal Act:

**“Liability of stranger signing bill**

54. If a person signs a bill otherwise than as drawer, [or] acceptor, signer of an aval or drawee certifying a cheque, he thereby incurs the liabilities of an indorser to a holder in due course.”.

**Insertion of section 54A in Act 34 of 1964**

17. The following section is hereby inserted in the principal Act after section 54:

**“Liability of signer of aval**

54A. (1) The liabilities of the parties to a bill or note may be secured by an aval.

(2) A person signs a bill or note as the signer of an aval where he signs the bill or note, and by words such as 'as aval', 'as surety' or 'as guarantor' expressly indicates that he is a surety: Provided that the unqualified signature of a person other than the drawer, maker, drawee or payee made on the back of the bill or note payable to order before endorsement by the payee shall be sufficient for such indication. 5

(3) The signer of an aval may specify in the bill or note the party for whom he has given his aval and if he does not so specify, he shall be deemed to have given his aval for the drawer or maker, as the case may be: Provided that, if a bill has been accepted, whether before or after the signing of the aval, the signer of that aval shall be deemed to have given his aval for the acceptor. 10

(4) The signer of an aval is liable jointly and severally with and as surety for, the party for whom he has given his aval or is deemed to have given his aval. 15

(5) Where the signer of an aval pays the bill or note, he acquires the rights arising out of the bill or note against the person for whom he has given his aval or is deemed to have given his aval and against all parties liable to that person.”. 20

#### **Amendment of section 55 of Act 34 of 1964**

20

**18.** Section 55 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) [**Subject to the provisions of sub-sections (2) and (3)**] If a bill is dishonored, the holder may recover from any party liable on the bill, and the drawer, if he has been compelled to pay the bill, may recover 25 from the acceptor, and an indorser who has been compelled to pay the bill, may recover from the acceptor, the drawer or a prior indorser as damages, which shall be deemed to be liquidated-

(i) the amount of the bill;

(ii) interest thereon from the time of presentment for payment if the 30 bill is payable on demand, or from the maturity of the bill in any other case[;

(iii) **the expenses of noting, and if protest is necessary and has been extended, the expenses of the protest].”;** and

(b) by the deletion of subsections (2) and (3). 35

#### **Amendment of section 58 of Act 34 of 1964**

**19.** Section 58 of the principal Act is hereby amended by the substitution for the word “banker” of the word “bank” wherever it occurs.

#### **Repeal of section 63 of Act 34 of 1964**

**20.** Section 63 of the principal Act is hereby repealed. 40

#### **Repeal of section 64 of Act 34 of 1964**

**21.** Section 64 of the principal Act is hereby repealed.

#### **Repeal of section 65 of Act 34 of 1964**

**22.** Section 65 of the principal Act is hereby repealed.

#### **Repeal of section 66 of Act 34 of 1964**

45

**23.** Section 66 of the principal Act is hereby repealed.

**Substitution of section 67 of Act 34 of 1964**

24. The following section is hereby substituted for section 67 of the principal Act:

**“Holder’s rights if bill or note is lost or destroyed**

67. (1) If a bill or note is lost or destroyed before it is overdue, the person who was the holder of it may request the drawer or maker to give him another bill or note, as the case may be, of the same tenor, giving adequate security to the drawer or maker, if required, to indemnify him against all persons whatever in case the bill or note alleged to have been lost or destroyed is found again.

(2) If the drawer or maker on such request refuses to give such bill or note he may be compelled to do so.”

**Substitution of section 68 of Act 34 of 1964**

25. The following section is hereby substituted for section 68 of the principal Act:

**“Action upon lost bill or note**

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

**Amendment of section 70 of Act 34 of 1964, as amended by section 4 of Act 58 of 20 1977**

26. Section 70 of the principal Act is hereby amended—

(a) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:

“the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity, as regards requisites in form, of every supervening contract, such as acceptance, endorsement [or acceptance for honour *supra* protest] or that of an aval, is determined by the law of the place where such contract was made, but—”: and

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) subject to the provisions of this Act, the interpretation of the contract of the drawer, indorser, acceptor [or acceptor for honour *supra* protest] or signer of an aval of a bill is determined by the law of the place where such contract is made: Provided that if [an inland] a bill payable in the Republic is indorsed outside the Republic, the endorsement shall as regards the payer be interpreted according to the law of the Republic;”.

**Amendment of section 71 of Act 34 of 1964**

27. Section 71 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) Notwithstanding the provisions of subsection (2) of section 3, the provisions of this Act applicable to a cheque apply to a bill drawn by a bank on itself and payable on demand.”.

**Amendment of section 72 of Act 34 of 1964**

28. Section 72 of the principal Act is hereby amended—

- (a) by the substitution for the word “banker” of the word “bank” wherever it occurs in paragraph (a) of subsection (1); and
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:  
 “(b) the holder of a cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such [banker] bank to the extent of such discharge, and be entitled to recover the amount from [him] it.”; and
- (c) by the substitution for the word “bankers” of the word “banks” in subsection (2).

#### Insertion of sections 72A and 72B in Act 34 of 1964

29. The following sections are hereby inserted in the principal Act after section 72:

##### “Liability of drawee who has certified cheque

**72A.** (1) A cheque is certified if the drawee signs it and adds words to the cheque that indicate that the cheque will be paid or that funds are available for its payment.

(2) When a drawee of a cheque certifies it he—

- (a) undertakes that he will pay the holder, or the drawer or an indorser who has been compelled to pay the cheque, the amount recoverable in terms of section 55 according to the tenor of his certification;
- (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 cheque;
- (ii) the existence of the payee and his then capacity to indorse.

##### Prevention of fraud

**72B.** Any person who is required by law to have his financial statements audited by a person registered in terms of section 15 of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), or by the Auditor-General, and any person obliged to appoint an accounting officer in terms of section 59 of the Close Corporations Act, 1984 (Act No. 69 of 1984), **shall exercise reasonable care in the custody of cheque forms and in the reconciliation of its bank statements.**”.

#### Substitution of section 73 of Act 34 of 1964

30. The following section is hereby substituted for section 73 of the principal Act:

##### “Revocation of bank’s authority

73. The duty and authority of a [banker] bank to pay a cheque drawn on [him] it by [his] its customer are **[determined] terminated by receipt of—**

- (a) countermand of payment;
- (b) **[receipt of] notice of the customer’s death or incapacity;**
- (c) **[receipt of] notice of the customer having [become insolvent] been** sequestrated or wound-up or placed under judicial management or declared a prodigal:

Provided such countermand or notice identifies the cheque, in the case of countermand, and the customer with reasonable particularity and gives the drawee a reasonable opportunity to act on it.”.

#### Repeal of section 74 of Act 34 of 1964

31. Section 74 of the principal Act is hereby repealed.



**Amendment of section 75 of Act 34 of 1964**

32. Section 75 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) If a cheque bears across its face an addition of [—

(a) the words ‘and Company’, or any abbreviation thereof, between two parallel transverse lines, either with or without the words ‘not negotiable’; or

(b) two parallel transverse lines [simply], either with or without the words ‘not negotiable’, that addition constitutes a crossing and the cheque is crossed generally. “; and

(b) by the substitution for subsection 2 of the following subsection:

“(2) If a cheque bears across its face an addition of the name of a [banker] bank, either with or without the words ‘not negotiable’ or ‘and Company’ or any abbreviation thereof, that addition constitutes a crossing and the cheque is crossed specially and to that [banker] bank.”.

**Insertion of section 75A in Act 34 of 1964**

33. The following section is hereby inserted in the principal Act after section 75:

**“hTon-transferable cheques**

**75A, (1)** Where a cheque bears boldly across its face the words ‘not transferable’ or ‘non transferable’, either with or without the word ‘only’ after the payee’s name—

(a) the cheque shall not be transferable but shall be valid as between the parties thereto:

(b) the cheque shall be deemed to be crossed generally, unless it is crossed specially: and

(c) the words ‘not transferable’ or ‘non transferable’ may not be cancelled and any purported cancellation shall be of no effect.

(2) A bank shall not be negligent by reason only of its failure to concern itself with—

(a) an endorsement intended to prevent transfer of the cheque; or

(b) words prohibiting transfer, or indicating an intention that it shall not be transferable, other than in the manner provided for in this section.”.

**Amendment of section 76 of Act 34 of 1964**

34. Section 76 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) A cheque may be crossed generally or specially by the drawer or a collecting bank.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) If a cheque is crossed specially, the [banker] bank to [whom] which it is crossed may again cross it specially to another [banker] bank for collection.”; and

(c) by the deletion of subsection (6).

**Substitution of section 77 of Act 34 of 1964**

35. The following section is hereby substituted for section 77 of the principal Act:

“Crossing material part of cheque

77. A crossing authorized by this Act is a material part of the cheque, and

it shall not be lawful for any person to obliterate, cancel or, except as authorized by this Act, to add to or alter such a crossing.”,

#### Substitution of section 78 of Act 34 of 1964

36. The following section is hereby substituted for section 78 of the principal Act:

##### “Duties of banks as to crossed cheques

5

78. (1) If a cheque is crossed generally, the [banker] bank on [whom] which it is drawn shall not pay it to any person other than a [banker] bank.”;

(2) If a cheque is crossed specially, the [banker] bank on [whom] which it is drawn shall not pay it to any person other than the [banker] bank to [whom] which it is crossed, or the latter’s agent for collection, if [he] it is a [banker] bank.

10

(3) If a cheque is crossed specially to more than one [banker] bank, except when crossed to two [bankers] banks of [whom] which the one is an agent for collection of the other, the [banker] bank on [whom] which it is drawn shall refuse payment thereof.

15

(4) If the [banker] bank on [whom] which a cheque is drawn—

(a) pays such cheque if it is crossed as is contemplated in sub-section (3);

(b) pays such cheque to any person other than a [banker] bank if it is crossed generally; or

20

(c) pays such cheque, if it is crossed specially, to any person other than the [banker] bank to [whom] which it is crossed or the latter’s agent for collection, if [he] it is a [banker] bank,

[he] it 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 if a cheque is presented for payment and it does not, at the time of presentment, appear to be crossed or to have had a crossing which has been obliterated, or to have a crossing which has been added to or altered, otherwise than as authorized by this Act, the [banker] bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made to a person other than a [banker] bank or the [banker] bank to [whom] which the cheque is or was crossed, or the latter’s agent for collection [who] which is a [banker] bank, as the case may be.”

25

30

35

#### Substitution of section 79 of Act 34 of 1964

37. The following section is hereby substituted for section 79 of the principal Act:

##### “Protection to bank and drawer where cheque is crossed

79. If the [banker] bank on [whom] which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a [banker] bank, and, if crossed specially, to the [banker]&@ to [whom] which it is crossed, or the latter’s agent for collection, [who] which is a [banker] bank, the [banker] bank paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.”

40

45

#### Amendment of section 81 of Act 34 of 1964

38. Section 81 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections:

50

“(1) If a cheque was stolen or lost while it was crossed as authorized by this Act and while it bore on it the words ‘not negotiable’, and it was

paid by the [banker] bank upon **[whom]** which it was drawn. under circumstances which do not render such **[banker]** bank liable in terms of this Act to the true owner of the cheque for any loss he may sustain owing to the cheque having been paid, the true owner shall, if he suffered any loss as a result of the theft or loss of the cheque, be entitled to recover from any person who was a possessor thereof after the theft or loss, and either gave a consideration therefor or took it as a donee, an amount equal to the true owner's said loss or the amount of the cheque, whichever is the lesser. 5

(2) If a person has after the theft or loss paid any such cheque into his account with a **[banker] bank after having paid, or for** the purpose of paying the amount of the cheque or part thereof to the person from whom he received the cheque, or, on his direction, to any other person, he shall, for the purposes of subsection (1), be deemed to have been a possessor of the cheque and to have given a consideration therefor: Provided that the foregoing provisions of this subsection shall not apply to a collecting **[banker] bank employing, another [banker] bank as [his] its agent for the collection** of any such cheque.”; and 10

(b) by the substitution for subsection (5) of the following subsection: 15

“(5) For the purposes of subsection (1), a **[banker who] bank which** receives payment of any such cheque for a customer shall, subject to the provisions of subsection (3), not be regarded as having given a consideration therefor, merely because **[he] it** has in [his] its own books credited [his] its customer's account with the amount of the cheque before receiving payment thereof, or because any such payment is applied towards the reduction or settlement of any debt owed by the customer to the **[banker]** bank.”. 20 25

#### **Substitution of section 82 of Act 34 of 1964**

39. The following section is hereby substituted for section 82 of the principal Act:

#### **“Application of sections 75 to 81 to certain documents other than cheques 30**

82. Sections 75 to and including 81 shall also apply to any document issued by a customer of any **[banker]** bank and intended to enable any person to obtain payment on demand of the sum mentioned in such document from such **[banker]** bank (or from any **[banker] bank**, if the document was issued on behalf of the State), and shall so apply as if the said document were a cheque, and the said sections shall *mutatis mutandis* also apply to any document which— 35

(u) was issued on behalf of the State; 40  
(b) is drawn upon or addressed to a servant of the State (hereafter in this section called the drawee); and

(c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a **[banker] bank**, 45

as if the said document were a cheque and as if the drawee were a **[banker] bank** and the State **[his] its** customer: Provided that nothing in this section contained shall render any such document a negotiable instrument.”. 45

#### **Amendment of section 83 of Act 34 of 1964**

40. Section 83 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 50

“(1) If a **[banker]** bank in good faith and in the ordinary course of business credits the account of [a] its customer **[of his]** with or pays to another **[banker] bank the amount of—**

(a) any cheque drawn on **[him] it**;

(b) any other document issued by [a] its customer [of his] and intended to enable any person to obtain payment on demand of the sum mentioned in such document from [him] it (or from any [banker] bank, if the document was issued on behalf of the State); or

(c) draft payable on demand drawn by such first-mentioned [banker] bank upon [himself] itself, or upon [his] its agent who is a [banker] bank, whether payable at the head office or some other office of [his] its bank or of such agent,

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

(b) by the substitution for subsection (2) of the following subsection:

“(2) The provisions of sub-section (1) shall *mutatis mutandis* also apply to any document which—

(a) was issued on behalf of the State;

(b) is drawn upon or addressed to a servant of the State (hereafter in this section called the drawee); and

(c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a [banker] bank,

as if the said document were a cheque and as if the drawee were a [banker] bank and the State [his] its customer.”.

#### Substitution of section 84 of Act 34 of 1964

41. The following section is hereby substituted for section 84 of the principal Act: 25

“Rights of banks if unendorsed or irregularly indorsed **cheques or certain other documents are delivered to them for collection**

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

(2) Where a cheque referred to in section 75A is delivered by the holder thereof to a bank for collection and the holder is indebted to the bank, the bank shall be deemed to be the holder thereof taking the cheque in pledge for such indebtedness with the same rights and subject to the same liabilities as the holder had.”.

#### Substitution of section S5 of Act 34 of 1964

42. The following section is hereby substituted for section 85 of the principal Act: 40

“Evidential value of payment of unendorsed or irregularly indorsed **cheques** or certain other documents

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

#### Amendment of section 93 of Act 34 of 1964

43. Section 93 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 50

“(3) T The following provisions as to bills do not apply to notes, namely. the provisions relating to—

(a) presentment for acceptance:

(b) acceptance: and

(c) [acceptance for honour *supra* protest;

(d)] bills in a set.”.

5

**Substitution of section 95 of Act 34 of 1964, as amended by section 6 of Act 77 of 1986**

44. The following section is hereby substituted for section 95 of the principal Act:

“Signature

10

95. [(1)] If by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written or printed thereon by some other person, by or under his authority, and the authorized sealing or stamping with a seal or stamp of a corporation shall be sufficient and be deemed to be 15 [quivalent] equivalent to the signing or endorsement of any such instrument or writing.

[(2) For the purpose of subsection (1) the printing by a computer of the name of an authorized signatory of a warrant-voucher or a Post Office cheque on a warrant-voucher or Post Office cheque shall be 20 sufficient, and shall be deemed to be the signing thereof.]”.

**Repeal of section 97 of Act 34 of 1964**

45. Section 97 of the principal Act is hereby repealed.

**Amendment of section 98 of Act 34 of 1964**

46. Section 98 of the principal Act is hereby amended by the substitution for 25 subsection ( 1 ) of the following subsection:

“(1) If a dishonored bill or note is authorized [or required] to be protested, and the services of a notary cannot be obtained at the place where the bill or note is dishonored, any landowner or householder of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, 30 and such certificate shall in all respects operate as if it were a formal protest of the bill.”.

**Short title and commencement**

47. This Act is called the Bills of Exchange Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

35