

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
BILLS OF EXCHANGE AMENDMENT
BILL**

[B 47—2000]

(As agreed to by the Portfolio Committee on Finance (National Assembly))

[B 47A—2000]

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AMENDMENTS AGREED TO

BILLS OF EXCHANGE AMENDMENT BILL
[B 47—2000]

CLAUSE 1

1. On page 2, in line 10, to omit “which” and to substitute “that”.
2. On page 2, in line 10, to omit “**[banking]**” and to substitute “banking”.
3. On page 2, in line 11, to omit “a bank”.
4. On page 2, to omit all the words in line 19.
5. On page 2, in line 22, to omit “82” and to substitute “83”.

CLAUSE 3

1. On page 3, in line 21, to omit “ ‘order’ or ” and to substitute “the order of ‘cash’ or to”.

CLAUSE 6

1. On page 3, in lines 33 and 34, to omit “the words preceding the proviso to”.
2. On page 3, in line 34, to omit “words” and to substitute “subsection”.
3. On page 3, in line 35, before “No” to insert “(1)”.
4. On page 3, in line 36, to omit “a” and to substitute “the”.
5. On page 3, in line 37, after “contract:” to add:

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.

CLAUSE 8

1. On page 3, in line 45, to omit “preprinted”.

CLAUSE 13

1. On page 4, in line 27, after “of” to insert:
subsection (1), paragraphs (a) and (b) of subsection (2) and subsection (3) of
2. On page 4, in line 28, to omit “a” and to substitute “the”.
3. On page 4, in line 28, to omit the first “bank”.

4. On page 4, in line 28, after the second “bank” to insert “on behalf of the holder”.
5. On page 4, from line 45, to omit subsection (3) and to substitute:

(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.

CLAUSE 18

1. On page 6, in line 20, to omit “subsection (2)” and to substitute “subsections (2) and (3)”.

CLAUSE 24

Clause rejected.

NEW CLAUSES

1. That the following be new Clauses:

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.”.

NEW CLAUSE

1. That the following be a new Clause:

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.”.

CLAUSE 27

1. On page 8, in line 2, to omit “(1) A” and to substitute “Any”.
2. On page 8, in line 5, to omit “a” and to substitute “any”.
3. On page 8, in line 7, to omit “while having” and to substitute “in the”.
4. On page 8, in line 8, to omit “his” and to substitute “its”.
5. On page 8, from line 9, to omit subsection (2).

CLAUSE 30

1. On page 8, from line 40, to omit all the words after “for” up to the end of paragraph (b) and to substitute:

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.”.

CLAUSE 31

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 75A in Act 34 of 1964

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

“Non-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 indorsement 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.".

CLAUSE 36

1. On page 10, in line 27, to omit "subsection (1)" and to substitute "subsections (1) and (2)".
2. On page 10, in line 27, to omit the second "subsection" and to substitute "subsections".
3. On page 10, after line 38, to insert:

(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.

CLAUSE 39

1. On page 11, from line 55, to omit subsection (2) and to substitute:

(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.