

# Negotiable Instrument law

## Chapter 1

### GENERAL PRINCIPLES

#### Article 1. Basis of the Law

This law created to govern the creation, transferring and liquidation of Negotiable Instruments, to observe and reconcile the international best practice on Negotiable Instrument

#### Article 2. Purpose of the Law

The purpose of this law is:

- 1- To facilitate business affairs.
- 2- To pave the way for accessibility to negotiable credits in business.
- 3- To expand commerce and investment.
- 4- To develop and strengthen the usage of negotiable Instruments among the people.
- 5- To govern the exchange and liquidation of negotiable Instruments.

#### Article 3. Basic Definitions

The following definitions shall apply in this law:

1. **“Negotiable Instrument”** means financial Instruments such as Bills of Exchange, Promissory Notes and Cheques which are negotiable in business.
2. **“Bill of exchange”** means an Instrument containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at a fixed or determinable future time, a certain sum of money, only to, or to the order of, a certain person or to the bearer of the Instrument.
3. **“Cheque”** means an Instrument containing an unconditional order, signed by the maker, directing a certain bank to pay on demand, a certain sum of money, only to, or to the order of, a certain person or to the bearer of the Instrument.
4. **“Promissory note”**, means an Instrument in writing , containing an unconditional undertaking, signed by the Maker, to pay on demand or at a fixed or determinable future time a certain sum of money, only to, or to the order of a certain person, or to the Bearer of the Instrument.
5. **“Acceptance”** means agreement to pay a Bill in accordance with its terms. It must be

written on the Bill .

6. **“Acceptor”** means a person that engages to pay a Bill in accordance with its terms.

7. **“Acceptor for honour”** means a person who accepts a Bill, under protest, for honour of the drawer or of any one of the endorsers after the Bill has been noted or protested for non-acceptance or for better security.

8. **“Accommodation party”** means a person that undertake the payment and is liable to pay the amount of Negotiable Instrument..

9. **“Bearer”** means a person who by negotiation comes into possession of an Instrument, which is payable to bearer.

10. **“Dishonor”** means non-payment or non-acceptance of an Instrument which was created according to this Law.

11. **“Drawer of the Bill or Cheque”** means a person who directs or orders payment on a Bill or Cheque to Drawee

12. **“Maker”** means a person who signs or is identified in a Note as a person undertaking to pay a Note.

13. **“Drawee”** means the person that is directed or ordered to pay a Bill or Cheque.

14. **“Drawee in case of need”** means the person whose name is written in the Bill or in any indorsement thereon, in addition to Drawee.

15. **“Holder”** means the payee or indorsee who is in possession of Negotiable Instrument or the bearer thereof.

16. **“Holder in due course”** means any person who for consideration becomes holder of an Instrument before it became overdue and without notice of defective title under this Law.

17. **“Issue”** means the first delivery of a Negotiable Instrument complete in form to a person who takes it as a Holder.

18. **“Indorsement”** means the signature on an Instrument by the maker or holder (other than as a maker) for the purpose of negotiation, on the back thereof or on a slip of paper annexed thereto.

19. **“Indorsement in full”** means the Indorsement which contains a direction to pay the amount mentioned in a Negotiable Instrument, Payee’s name and Signature of Indorser.

20. **“Indorsement in blank”** means the Indorsement that contains only the Indorser’s signature.

21. **“Indorsee”** means a person in whose favour an Indorsement in full accomplished.

- 22. “Liability”** means an obligation to perform an act or make a payment.
- 23. “Discharge”** means to remove liability regarding a Negotiable Instrument.
- 24. “Maturity”** means the date at which a sum of money becomes due according to the terms of an Instrument.
- 25. “Payment in due course”** means an state that payment occur in accordance with the apparent tenor of the Instrument in good faith which would not cause reasonable grounds for believing that the possessor of the instrument is not entitled to receive payment of the amount shown in the Instrument.
- 26. “Negotiation”** means transfer of an Instrument to any person that places that person in the position of a holder.
- 27. “Party”** means a person who has signed an Instrument as Drawer, Maker, Acceptor, Indorser or Guarantor.
- 28. “Payee”** means the person named in an Instrument to whom or to whose order the money is directed to be paid.
- 29. “Protest”** means notification under this Law, which is given by holder in the case of - dishonor of a Bill by non-acceptance, or non-payment of a Note.
- 30. “Inland Instrument”** means a Negotiable Instrument drawn or made in Afghanistan that is payable in, or drawn upon any person resident in Afghanistan.
- 31. “Foreign Instrument”** means a Negotiable Instrument drawn or made out of Afghanistan that is payable outside, or drawn upon any person whom is not resident of Afghanistan.
- 32. “Negotiated”** means a Negotiable Instrument which has been transferred to any person, so as to constitute that person the holder thereof.
- 33. “At sight” “On presentment”** In a Promissory Note or Bill of Exchange, the expressions “At sight” and “On presentment” means on demand.
- 34. “After sight”** means, in a Promissory Note, after presentment for [at] sight, and, in a Bill of Exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.
- 35. “Authorized Official”** means a person authorized by Da Afghanistan Bank’s commission for financial dispute resolution to perform the duties required by this Law, including verification of a signature or certification of a document.
- 36. “Delivery”** means transfer of possession of Negotiable Instrument, actual or constructive, from one person to another.
- 37. “Transferor by delivery”** means the person who negotiates a Negotiable Instrument

payable to Bearer, by delivery without indorsing.

**38. “Alteration”** means an unauthorized change to an Instrument.

**39. “Material alteration”** means a significant alteration of an Instrument and includes alteration of the date, sum payable and place of payment.

**40. “Signature”** means a specific sign by handwritten at the end of an Instrument, its facsimile or an equivalent authentication effected by any other means enforceable in Afghanistan.

**41. “Specified Place”** means a place clearly specified in Negotiable Instrument for presentment

#### **Article 4. Application**

This law is applicable to all Negotiable Instruments using in business.

#### **Article 5. Supervision**

Da Afghanistan Bank is liable for supervising the implementation of this law.

### **Chapter 2**

#### **Negotiable Instrument**

#### **Article 6. Requisite condition**

(1) An Instrument is negotiable if meet the following condition:

- 1- Unconditionality.
- 2- Certainty in amount
- 3- Certainty in Party to the Instrument.

(2) A Negotiable Instrument is unconditional if:

1- The time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

2- The sum payable being subject to adjustment for profit or loss, as the case may be of the business of the maker.

3- Particular fund out of which the drawee is to reimburse himself or a particular account to be debited to the amount is stated, or the transaction which gives rise to the note or Bill should specified in the payment 's order

(3) The sum payable is considered “certain” if:

- 1- It includes future interest or return in any other form or
- 2- It be payable at an indicated rate of exchange, or is payable at the current rate of exchange on creation day of instrument
- 3- It be payable in installments.
- 4- It contains a provision that on default of payment of one or more installments or interest the whole or the unpaid balance is accelerated and shall become due.

(4) Where the person intended can reasonably be ascertained from the promissory note or the bill of exchange; he is a “certain person,” although he is misnamed or designated by description only.

Where the payee is a fictitious or non-existing person, the bill of exchange may be treated as payable to bearer.

**Article 7. Promissary note and Bill of exchange payable on demand**

(1) A promissory note or Bill of Exchange is payable on demand where:

- 1- It is expressed to be so, or to be payable at sight or on presentment; or
- 2- No time for payment is specified in it; or
- 3- The note or Bill is accepted or indorsed after it is overdue, as regards the person accepting or indorsing it.

(2) A promissory note or Bill of Exchange payable on demand shall be deemed overdue when it appears on the face of it to have been in circulation for a period of more than six months.

(3) A cheque is always payable on demand.

**Article 8. Instrument Payable to Order**

(1) A Negotiable Instrument is payable to order where it is expressed to be so payable or last Indorsement is an Indorsement in blank.

(2) A Negotiable Instrument is payable to order where it 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.

(3) Where a promissory note, bill of exchange or cheque, either 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 to him or his order at his option.

(4) A negotiable Instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.

#### **Article 9. Ambiguous Instruments**

Where an Instrument may be construed either as a promissory note or Bill of Exchange, the holder may at his election treat it as either, and the Instrument shall be thenceforward treated accordingly.

#### **Article 10 Difference in figures and words**

If the amount undertaken or ordered to be paid is stated differently in figures than in words, the amount stated in words shall be deemed valid: Provided that if the words are ambiguous or uncertain, the amount may be ascertained by referring to the figures.

### **Chapter 3**

#### **Parties to Negotiable Instrument**

#### **Article 11. Liability of drawer**

- (1) The drawer of a bill of exchange by drawing it, engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured, he will compensate the holder or any indorser who has paid it,
- (2) The drawer of a cheque by drawing it, engages that in the case of dishonour by the drawee he will compensate the holder:
- (3) Provisions stated in clause (1) and (2) of this article are applicable when notice of dishonour of the bill or cheque has been given to and received by the drawer.

#### **Article 12. Liability of drawee of cheque**

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required to do so, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

#### **Article 13. Liability of maker of note and acceptor of bill**

In the absence of a contract to the contrary, the maker of a promissory note, by

making it, and the acceptor before maturity of a bill of exchange, by accepting it, engages that he will pay it according to the tenor of the note or his acceptance of a bill respectively, and in default of such payment, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

The acceptor of a bill of exchange at or after maturity, by accepting it, engages to pay the amount thereof to the holder on demand.

#### **Article 14. Liability of Drawee of a Bill**

(1) The following persons can be bind to pay the amount of a bill by acceptance:

- 1- Drawee or drawees, or
- 2- A person named therein as a drawee in case of need, or
- 3- An acceptor for honour

(2) Where there are several drawees of a bill of exchange who are partners , each of them can accept it for himself or as an agent to his partners provided that there is nothing to the contrary in related law or partnership agreement.

(3) Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

#### **Article 15. Liability of indorser**

In the absence of a contract to the contrary, the indorser of a negotiable Instrument, by indorsing it, 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 subsequent indorser who is compelled to pay it for any loss or damage caused to him by such dishonour.

Every indorser after dishonour is liable as upon an Instrument payable on demand.

#### **Article 16. Liability of prior parties**

Every prior party to a negotiable Instrument is liable thereon to a holder in due course, until the Instrument is duly satisfied.

#### **.Article 17. Liability of Maker, Drawer and acceptor as principal debtor or surety**

(1) The maker of a promissory note or cheque, the drawer of a bill of exchange before the bill of exchange has been accepted, and the acceptor of a bill of exchange are liable on those instruments as principal debtors, unless a contract expresses the contrary.

(2) Persons who become parties to an instrument after it is made, drawn, or accepted become sureties for the maker, drawer, or acceptor.

(3) Each surety is liable on the instrument as a principal debtor with respect to each person who becomes a party to the instrument after that surety, unless a contract expresses the contrary.

#### **Article 18. Liability of accommodation party**

(1) An Accommodation party is liable on a negotiable Instrument to a holder in due course, notwithstanding that when such holder took the Instrument he knew such party to be an accommodation party

(2) An accommodation party to a negotiable Instrument, if he has paid the amount thereof, is entitled to recover such amount from the party accommodated.

(3) An accommodated party who pays a negotiable instrument may not recover the amount of the payment from an accommodation party, and has no right to request such recovery.

#### **Article 19. Liability of Transferor**

(1) Where the transferor of a negotiable Instrument payable to bearer, negotiates it by delivery without indorsing it, he is not liable on the Instrument.

(2) A transferor by delivery who negotiates a Negotiable Instrument thereby warrants to his immediate transferee:

- Being a holder for consideration,
- The Instrument is what it purports to be,
- He has a right to transfer it, and that
- At the time of transfer he is not aware of any defect which renders the Instrument without value.

#### **Article 20. Suretyship**

When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under the Law, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

#### **Article 21. Discharge of indorser's liability**

When the holder of a negotiable Instrument without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged

from liability to the holder to the same extent as if the Instruments had been paid at maturity.

**Article 22. Acceptor bound although indorsement altered or have error on it.**

An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such Indorsement altered or have error on it.

**Article 23. Acceptance of bill drawn in fictitious name**

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course, provided that the instrument or its indorsement purporting to be made by the drawer.

**Article 24. Issuence of Instrument against accomplishment of service or produce of profit**

- (1) Where the Negotiable Instrument made, drawn, accepted, indorsed or transferred in exchange to performance of a service or produce of profit, , creates no obligation of payment between the parties to the transaction until that purpose accomplished.
- (2) If any such party has transferred the Instrument with or without Indorsement to a holder for considerations, such holder, and every subsequent holder deriving title from him, may recover the amount due on such Instrument from the transferor for consideration or any prior party thereto.
- (3) the party to the instrument shall recover thereon' an amount equal to the value of the consideration (if any) which he has actually paid or performed.

**Article 25. Standing in relation**

(1) When the consideration for which a person signed a Negotiable Instrument consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

(2) The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

**Article 26. Holder's entitlement is proportional to the service or profits which he paid or performed**

Where a a Negotiable Instrument issued in exchange of goods or value and the good or value partially acquired , the sum which a holder, standing in immediate relation with such signer is entitled to receive from him is proportionally decrease.

**Article 27. Holder's right to duplicate of lost bill**

Where a bill of exchange 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 again and the drawer is liable to give such duplicate bill.

**Article 28. Liability of Signer or legal representative of deceased person**

(1) A person is liable when he signs a Negotiable Instrument as maker, drawer, Indorser or Acceptor. Where a person signs any Instrument in a trade or assumed name he is liable thereon as if he had signed it in his own name.

(2) A legal representative of a deceased person who signs his name to a Negotiable Instrument is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

**Article 29. Forged or unauthorized signatures**

Where a signature on a Negotiable Instrument is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the instrument or to give a discharge therefore 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 Instrument is precluded from setting up the forgery for want of authority.

Nothing in this Article shall affect the ratification of an unauthorized signature not amounting to a forgery.

**Article 30. Unrelated and unidentified Signature**

A person placing his signature upon a negotiable Instrument otherwise than that as maker, drawer or acceptor is presumed to be an indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

**Article 31. Representation in Negotiable Instrument.**

Every person who have capacity and capability of making contract may act on issuance, drawing , accepting , endorsing or submitting a Negotiable Instrument on behalf of other person

**Article 32. Liability of agent**

Where a person signs a Negotiable Instrument without adding to his Signature words indicating that he signs it as an agent in a representative role, he is personally liable thereon except the person who induced to sign the Negotiable Instrument on behalf of a principal.

**Article 33. Constraint in negotiation by legal representative**

The legal representative of a deceased person cannot negotiate by delivery only a Negotiable Instrument payable to order and indorsed by the deceased but not delivered.

**Chapter 4**

**Negotiation**

**Article 34. Delivery as a condition for completion of negotiation**

- (1) The making, acceptance or indorsement of a Negotiable Instrument is completed by delivery, actual or constructive.
- (2) A Negotiable Instrument payable to bearer is negotiable by the delivery thereof, subject to the provision of Article 48 (Defective Title).
- (3) A Negotiable Instrument payable to order is negotiable by the holder by indorsement and delivery thereof, , subject to the provision of Article 48 (Defective Title).
- (4) As between parties standing in immediate relation, delivery, actual or constructive must be made by the party making, accepting or indorsing the Instrument or by a person authorized by him on his behalf.
- (5) A Negotiable Instrument delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of holder for value without notice of the condition) unless such event

**Article 35. Person who has capacity of negotiation**

maker, drawer, payee or indorsee of a negotiable Instrument may indorse and negotiate a Negotiable Instrument which is not restricted or excluded as

mentioned in this law, provided that, he is in lawful possession thereof; or a payee or transferee (indorsee) be a holder thereof.

**Article 36 Restrective Indorsement and Effect of indorsement**

(1) An Indorsement is restrictive where it either:

- 1- restricts or excludes the right to further negotiate the Instrument, or
- 2- Constitutes the indorsee as agent of the indorser to indorse the Instrument or to receive its contents for the indorser or for some other specified person provided that the mere absence of words implying right to negotiate does not make the indorsement restrictive.

(2) Subject to the provisions of this Law relating to restrictive indorsement, the indorsement of a negotiable Instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation.

**Article 37. Making an Indorsement conditional**

The indorser of a negotiable Instrument may, by express words in the indorsement, make such liability or the right of the indorsee to receive the amount due thereon depends upon the happening of a specified event, although such event may never happen.

Where an Indorser so make his liability conditional and afterwards becomes the holder of the Instrument, all intermediate indorsers are liable to him.

Where the right of an indorsee to receive the amount due on the negotiable Instrument is made dependent in the manner stated above, the condition is valid only as between the indorser and the indorsee.

Where the indorsement of a negotiable Instrument purports to be conditional, the payer may disregard the condition, and payment to the indorsee is valid whether the condition has been fulfilled or not.

**Article 38. Holder claiming through holder in due course**

(1) A holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the negotiable Instrument, has all the rights therein of that holder in due course as regards the acceptor and all parties to the Instrument prior to that holder.

(2) Where the title of the holder is defective:

- (i) if he negotiates the Instrument to a holder in due course, that holder obtains a good and complete title to the Instrument; and
- (ii) if he obtains payment of the Instrument, the person who pays him

in due course gets valid discharge for the Instrument.

**Article 39. Rights of holder**

A holder may receive payment in due course under a negotiable instrument, and further negotiate it in the manner provided by this Law; he may also sue on such instrument in his own name.

**Article 40. Rights of holder in due course**

A holder in due course holds the negotiable Instrument free from any defect of title, and free from defenses available to prior parties among themselves, and may enforce payment of the Instrument for the full amount thereof against all parties liable thereon.

**Article 41. Instrument indorsed in blank**

Subject to the provisions relating to crossed cheques, a negotiable Instrument indorsed in blank is payable to the bearer thereof even if originally payable to order.

**Article 42. Conversion of indorsement in blank into indorsement in full**

- (1) Any holder of a Negotiable Instrument indorsed in blank may convert the blank indorsement into an indorsement in full by writing above the indorser's signature a direction to pay the amount to or to the order of himself or to some other person. Completing the conversion does not make the holder an indorser.
- (2) After a Negotiable Instrument indorsed in blank has been converted to a Negotiable Instrument indorsed in full, only the indorsee, or one who derives title through the indorsee, may claim the amount of the Negotiable Instrument.

**Article 43. Requisites of indorsement**

- (1) Negotiation by indorsement must cover the total amount of the instrument
- (2) An indorsement which purports to transfer to the indorsee only a part of the amount payable, or which purports to transfer the Instrument to two or more indorses severally, is not valid as a negotiation of the Instrument. But where such amount has been paid in part, a note to that effect may be indorsed on the Instrument, which may then be indorsed for the balance.

**Article 44. Negotiation of Instrument to party already liable thereon**

Where a negotiable Instrument is negotiated back before maturity to the maker or drawer or a prior indorser or to the acceptor, such party may, subject to the provisions of this Law, re-issue and further negotiate the Instruments but he is not entitled to enforce payment of the Instrument against any intervening party to whom he was previously liable.

#### **Article 45. Defective title**

When a Negotiable Instrument has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the Instrument, nor any possessor or indorser who claims through such person, is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, unless such possessor or indorser is, or some person through whom he claims was, a holder thereof in due course.

#### **Article .46 Negotiable Instrument acquired after dishonour or when overdue**

- (1) The holder of a negotiable Instrument, who has acquired it after dishonour, whether by non-acceptance or nonpayment with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor, and is subject to the equities to which the transfer was subject at the time of acquisition by such holder.
- (2) Where a person who, in good faith and for consideration, becomes the holder after maturity of a promissory note or bill of exchange made, drawn or accepted without consideration, may recover the amount of the note or bill from any prior party.

#### **Article 47. Instrument negotiable until payment or satisfaction**

A negotiable Instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

### **Chapter 5**

#### **Presentment of Negotiable Instrument**

#### **Article 48. Presentment of bill for acceptance**

- (1) A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance. If the drawee cannot, after reasonable search be found, the bill is dishonoured.
- (2) If the bill is directed to the drawee at a particular place it must be presented at that place; and if on the due date for presentment he cannot, after a reasonable search, be found there, the bill is dishonoured.
- (3) Where authorized by law, agreement or usage, a presentment through the post office by means of a registered letter is sufficient.
- (4) The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty eight hours (exclusive of

public holidays) to consider whether he will accept it.

**Article 49. Presentment of promissory note for sight**

A promissory note, payable at a certain period after sight must be presented to the maker thereof for sight, within a reasonable time after it is made and during business hours.

**Article 50. Presentment for payment**

(1) Subject to provisions of this law, Negotiable Instrument must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In default of such presentment, the other parties thereto are not liable thereon to such holder.

(2) Where there are several persons, not being partners that are liable on a negotiable Instrument, as makers, acceptors or drawees, as the case may be, and no place of payment specified, presentment must be made to them all.

**Article 51 Presentment for payment unnecessary**

A promissory note or a bill of exchange is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker of the Note and acceptor of a bill. .

**Article 52. Hours for presentment**

Presentment for payment must be made during the usual hours of business, and, if at a bank, within banking hours.

**Article 53. Presentment for payment payable after date or sight**

A promissory note or bill of exchange, made payable at a specified period after date or sight thereof must be presented for payment at maturity.

**Article 54. Presentment for payment of promissory note payable by installments**

A promissory note payable by installments must be presented for payment on the third day after the date fixed for payment of each installment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

**Article 55. Presentment for payment at a specified place or elsewhere**

(1) A Negotiable Instrument made, drawn or accepted payable at a specified

place must, in order to charge any party thereto, be presented for payment at that place.

- (2) A promissory note or bill of exchange, not made payable as mentioned in clause (1) of this Article, must be presented for payment at the address of the maker, acceptor or drawee stated in the Instrument and if no such address is given at the place of (business), if known, or at the ordinary residence (if known), of the maker, drawee or acceptor thereof, as the case may be.
- (3) If the maker, drawee or acceptor of a negotiable Instrument has no known place of business or residence and no place is specified in the Instrument for presentment for acceptance or payment, such presentment may be made to him or them in person wherever he or they can be found.

#### **Article 56. Presentment of copy of Instrument**

- (1) Presenter may present a copy of the Instrument thereof delivered to the person liable thereon, either personally, or by registered post, or by other effective means.
- (2) Presenter shall allow the liable person to inspect and verify the copy of Negotiable Instrument, mentioned in clause (1) of this Article and decide regarding the acceptance by the end of business hours of the day. If the liable person refuses to accept the copy of the instrument the holder shall present the original Instrument

#### **Article 57. Presentment of cheque to charge drawer**

- (1) A cheque must, in order to charge the drawer, be presented at the Bank upon which it is drawn before the relation between the drawer and his banker damage.
- (2) A cheque must, in order to charge indorser (except the drawer), be presented within a reasonable time after delivery thereof by such person.

#### **Article 58. Presentment of Instrument payable on demand**

A Negotiable Instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

#### **Article 59. Presentment to agent, representative or assignee**

Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent or bankrupt, to his assignee under the law.

#### **Article 60. Excuse for delay in presentment for acceptance or payment**

Delay in presentment for acceptance or payment is excused if the delay is caused not imputable to his default, misconduct or negligence. When the cause of delay ceases to

operate, presentment must be made within a reasonable time.

**Article 61. When presentment unnecessary**

(1) No presentment for payment is necessary, and the Instrument shall be deemed to be dishonoured at the due date for presentment, in any of the following cases:

1- if the maker, drawee or acceptor intentionally prevents the presentment of the Instrument, or

2- if the Instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

3- if the Instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

4- if the Instrument not being payable at any specified place, he cannot be found after due search

5- as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment

6- as against any party if, after maturity, with knowledge that the Instrument has not been presented he makes a part payment on account of the amount due on the Instrument, or he promises to pay the amount due thereon in whole or in part; or he otherwise waives his right to take advantage of any default in presentment for payment;

7- as against the drawer, if the drawer could not suffer damage from the want of such presentment;

8- where the drawee is a fictitious person;

9- as regards an indorser, where the negotiable Instrument was made, drawn or accepted for the accommodation of that indorser and he had reason to expect that the Instrument would not be paid if presented; and

10- where, after the exercise of reasonable diligence, presentment as required by this Law cannot be effected.

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

**Article 62 Negligence of banker with bill presented for payment**

When a bill of exchange has been accepted and made payable at a specified bank and has been duly presented there for payment and has been dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to

the holder, he must compensate the holder for such loss.

## **Chapter 6**

### **Payment and Interest**

#### **Article 63. To whom payment should be made**

Subject to the provisions of Article ٧١ of this law (Discharge from liability by cancellation), payment of the amount due on a Negotiable Instrument, must, in order to discharge the marker or acceptor, be made to the holder of the Instrument.

#### **Article 64. Interest or return in any form**

(1) Subject to the provisions of laws relating to relief and protection for debtors, calculation of interest on a Negotiable Instrument may be accomplished as follows:

1 - When a promissory note or bill of exchange states the rate of interest to be paid, but does not state the date when such interest becomes payable, the amount shall be calculated as follows:

-In the case of a promissory note, interest shall be calculated at the rate, and on the amount of the principal owed, as specified in the promissory note. Interest shall be calculated from the date of the promissory note and continuing through the date on which amount due is paid or on which a suit to recover the amount is initiated.

-In the case of a Bill of Exchange, interest shall be calculated at the rate, and on the amount of the principal owed, as specified in the Bill of Exchange. Interest shall be calculated from the date on which the amount of the bill becomes payable and continuing through the date on which amount of the bill is paid or on which a suit to recover the amount is initiated.

2 - When a promissory note or bill of exchange does not state whether interest or return is to be paid and/or does not specify the rate at which interest is to be paid, interest shall be allowed and shall be calculated as follows:

-The rate of interest shall be calculated according to the annual rate of interest permissible under the law of Afghanistan.

-In the case of a promissory note, interest shall be charged beginning from the date of the note and continuing through the date on which the amount due is paid or on which a suit to recover the amount is initiated.

-In the case of a Bill of Exchange, interest shall be charged beginning from the date on which the amount of the bill becomes payable and continuing through the date on which the amount due is paid or on which a suit to recover the amount is initiated.

(2) The above rules for calculating the interest due on a promissory note or bill of

exchange shall prevail over any other agreement the parties may have made but failed to reflect in the promissory note or bill of exchange at issue.

(3) When a Negotiable Instrument specifies that return is to be based on a mechanism other than interest but does not specify the amount or rate of return, the amount or rate of return shall be calculated as follows:

- 1 - When the Negotiable Instrument specifies that the return shall be calculated on the basis of a mark-up in price, lease, hire-purchase or service charges, the rate to which the parties have contracted will be applied.
- 2 - When the Negotiable Instrument specifies that the return shall be calculated on the basis of participation in profits and loss, a Court shall determine the just and reasonable amount of return to be applied, with due consideration to the profit-sharing agreement entered into between the bank and the debtor in the original loan contract.
- 3 - Return shall be allowed from the date the Negotiable Instrument becomes due until the date the Negotiable Instrument is actually paid.

**Article 65. Liability of indorser to pay the interest**

When the party charged is the indorser of an Instrument dishonoured by non-payment, he is liable to pay interest or return in any other form only from the time that he receives notice of the dishonour.

**Article 66. Delivery of Instrument on payment or indemnity in case of loss**

Any person liable to pay, and called upon by the holder thereof to pay the amount due on a promissory note, bill of exchange or cheque is, before payment, entitled to have it shown, and is on payment entitled to have it delivered to him or, if the Instrument is lost, to be indemnified against any further claim thereon against him.

**Chapter 7**

**Discharge from Liability on Negotiable Instrument**

**Article 67. Cases of Discharge from liability**

The maker, acceptor or indorser respectively of a negotiable Instrument is discharged from liability thereon;

1- To a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him and to all parties claiming under such holder .

2- To a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge

3- to all parties thereto, if the Instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of

the amount due thereon.

**Article 68. Giving grace to drawee**

If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

**Article 69. When cheque not duly presented and drawer damaged thereby**

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person of whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage

In determining what a reasonable time is regard shall be given to the nature of the cheque, the usage of trade and of bankers, and the facts of the particular case.

(2) The holder of the cheque as described in clause (1) as to which such drawer or person is so 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.

**Article 70. Cheque payable to order**

(1) Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer, thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

**Article 71. Qualified or limited acceptance**

(1) If the holder of a bill of exchange acquiesces to a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

(2) An acceptance is qualified where:

1- Declaring the payment to be dependent on the happening of an event therein stated

- 2- It undertakes the payment of only part of the sum ordered to be paid
- 3- No place of payment being specified in the order, it undertakes the payment at a specified place,; or where, a place of payment being specified in the order, it undertakes the payment at some other place .
- 4- Where it undertakes the payment at a time other than that at which under the order it would be legally due.

**Article 72. Effect of material alteration**

- (1) Any material alteration of a negotiable Instrument renders the same void, unless it was made in order to carry out the common intention of the principal parties.
- (2) Any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.
- (3) The provisions of this Article are subject to Articles 42 and 113 of this law.

**Article 73. Acceptor and indorser's liability on previous alteration**

An acceptor or indorser of a negotiable Instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the Instrument.

**Article 74. Payment of Instrument on which alteration is not apparent**

Where a Negotiable Instrument has been materially altered but does not appear to have been so altered, or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon.

**Article 75. Discharge of maker, drawer , acceptor and indorser after principal debtor becomes holder**

- (1) The maker, drawer, acceptor or indorser of a negotiable Instrument is discharged from liability thereon when the person liable thereon as principal debtor becomes the holder thereof at or after its maturity.
- (2) When the holder of an accepted bill of exchange enters into any contract with the acceptor of the nature referred to in Article 20 of this law (Suretyship) , the other parties are discharged, unless the holder has expressly reserved his right to charge them.

## Chapter 8

### Notice of Dishonour

#### Article 76. Dishonour by non-acceptance

A bill of exchange may be treated as dishonoured. by non-acceptance where:

- 1- The drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill.
- 2- Presentment is excused and the bill is not accepted.
- 3- The drawee is incompetent to contract.
- 4- The acceptance is qualified.

#### Article 77. Dishonour by non-payment

A Negotiable Instrument is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

#### Article 78. Notice of dishonour

- (1) When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the Instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to one or more of several parties whom he seeks to make jointly liable thereon.
- (2) When a bill of exchange is dishonoured by non-acceptance, the drawer or any indorser to whom such notice is not given is discharged; but the rights of a holder in due course subsequent to the failure to give notice shall not be prejudiced by such failure.
- (3) When a bill of exchange 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.
- (4) Nothing in clauses (1,2&3) of this Article renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

#### Article 79. Presentment of notice

- (1) Notice of dishonour may be give to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative,

or, where he has been declared an insolvent or bankrupt, to his assignee as required by law. Notice may be oral or written and may, if written, be sent through the post office, and may be in any other form according to law; but it must inform the party to whom it is given, either in express terms or by reasonably intended means

It must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

(2) Notice stated in clause (1) should contains the following information:

- 1- that the Instrument has been dishonored,
- 2- In what way dishonored have made.
- 3- That the person who receives it is responsible for dishonor.

(3) If the notice is duly directed and sent by post office and is miscarried, such miscarriage does not render the notice invalid.

**Article 80. liability to transmit notice of dishonour**

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by Article 77 (Notice of dishonour).

**Article 81. Agent for presentment**

When the Instrument is deposited with an agent for presentment, the agent is obliged to transmit it to principal within reasonable time.

**Article 82. When party to whom notice given is dead**

When the party to whom notice of dishonour is dispatched is dead, if the party dispatching the notice is ignorant of his death, the notice is sufficient and he discharged from any further liability.

**Article 83. When notice of dishonour is unnecessary**

No notice of dishonour is necessary:

- 1- When it is dispensed with by the party entitled thereto
- 2- In order to charge the drawer when he has countermanded payment
- 3- When the party charged could not suffer damage for want of notice
- 4- When the party entitled to notice cannot after due search be found; or the

party bound to give notice is unable give it despite reasonable measures taken by him.

- 5- To charge the drawers when the acceptor is also a drawer
- 6- In the case of a promissory note which is not negotiable
- 7- When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the Instrument.

## **Chapter 9**

### **Noting and Protest**

#### **Article 84. Noting**

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by an Authorized Official upon the Instrument, or upon a paper attached thereto.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason and the charges of the Authorized Official.

#### **Article 85. Protest**

- (1) When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by an Authorized Official. Such certification is called a protest.
- (2) the holder may, within a reasonable time, cause an Authorized Official to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid protest for better security occurs When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached before the maturity of the bill.

#### **Article 86. Contents of protest**

- (1) A protest under Article 85 of this law must contain:
  - 1- the name of the person for whom and against whom the Instrument has been protested
  - 2- when the note or bill has been dishonoured, the place of dishonour, and, when better security has been refused, the place and time of refusal
  - 3- a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the Authorized Official; the terms of his

answer, if any, or a statement that he gave no answer or that he could not be found

4- a literal transcript of the Instrument and of everything written or printed thereupon

5- the details of the Authorized Official making the protest

6- in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which such acceptance or payment was offered and effected.

#### **Article .87 Protest for non-payment after dishonour by non-acceptance**

All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

#### **Article 88. Protest of foreign bills**

Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

### **Chapter 10**

#### **Reasonable Time**

#### **Article 89. A note or bill payable at a determinable future time**

A promissory note or Bill of exchange is payable at a determinable future time within the meaning of this Law if, it is expressed to be payable:

- 1- At a fixed time after date or sight; or
- 2- On or at a fixed time after the occurrence of a specified event which is certain to happen, though the time of its happening may be uncertain.

#### **Article 90. Anti-dating and post--dating.**

A Negotiable Instrument is not invalid by reason only that it is anti-dated or post-dated:

Provided that the anti-dating or post-dating does not involve any illegal or fraudulent purpose or transaction.

#### **Article 91. Calculating maturity of Bill or note payable months after date or sight**

- (1) In calculating the date at which a promissory note or Bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the

month which corresponds with the day on which:

- 1- the Instrument is dated, or
- 2- presented for acceptance or sight, or
- 3- noted for non-acceptance, or
- 4- protested for non-acceptance, or
- 5- the event happens, or,

- (2) Where the Instrument is a Bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted.

If the month in which period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

- (3) Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

**Article 92. Calculating maturity of Bill or note payable days after date or sight**

In calculating the date at which a promissory note or Bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the following days are excluded :

- 1- the day on which the instrument is dated
- 2- day of presentment for acceptance or sight
- 3- day of protest for non-acceptance
- 4- day on which the event happens, shall be excluded.

**Article 93. When day of maturity is a holiday**

When the day on which a promissory note or Bill of exchange is at maturity is a public holiday, the Instrument shall be deemed to be due on the next business day.

**Article 94. Reasonable time**

In determining what a reasonable time is for presentment, for acceptance or payment, for giving notice of dishonour and for noting, regard shall be given to the nature of the Instrument and the usual course of dealing with respect to similar Instruments and, in calculating such time, public holidays shall be excluded.

**Article 95. Reasonable time to give notice of dishonour**

- (1) If the holder and the party to whom notice of dishonour is given carry on business or live in the same place, such notice is given within a reasonable time if it is dispatched in time to reach its destination on the day next after the day of dishonour.
- (2) If the parties stated in clause (1) carry on business or live in different

places, such notice is given within a reasonable time if it is dispatched by the next post or on the day next after the day of dishonour.

- (3) A party to an instrument who is not a holder of that instrument gives notice to a prior party within a reasonable time if he act according to clauses (1&2) of this Article.

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## **Chapter 11**

### **Acceptance and Payment of bill for Honour**

#### **Article 96. Acceptance for honour**

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereof may, with the consent of the holder by writing on the bill, accept the same for the honour of any prior party thereto.

#### **Article 97. How acceptance for honour must be made**

- (1) A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest, the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.
- (2) Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

#### **Article 98. Liability of acceptor for honour**

- (1) An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.
- (2) An acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity or the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

#### **Article 99. Payment for honour**

When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying or his agent in that behalf has previously declared before an Authorized

Official the party for whose honour he pays, and that such declaration has been recorded by such Authorized Official.

**Article 100. Right of payer for honour**

Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

**Article 101. Drawee in case of need**

- (1) Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.
- (2) A drawee in case of need may accept and pay the bill of exchange without previous protest.

**Chapter 12**

**Compensation of Negotiable Instrument**

**Article 102. Compensation**

The compensation payable in case of dishonour of a Negotiable Instrument by any party liable to the holder or any indorsee, shall be determined by the following rules:

- (1) The holder is entitled to the amount due upon the Instrument, together with the expenses properly incurred in presenting, noting and protesting it
- (2) When the person charged resides at a place different from that at which the Instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places
- (3) When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places.
- (4) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest, at a percentage rate per annum as allowed under the law of Afghanistan, from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment

**Article 103. Drawing bill upon person who is liable to compensation**

The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the Instrument

dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

## **Chapter 13**

### **Special Rules applicable to Evidences**

#### **Article 104. Facts deemed to be true regarding Negotiable Instruments**

Until the contrary is proved, the following shall be deemed true:

- 1- that every negotiable Instrument was made or drawn for consideration, and that every such Instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration
- 2- that every negotiable Instrument bearing a date was made or drawn on such date
- 3- that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
- 4- that every transfer of a negotiable Instrument was made before its maturity
- 5- that the indorsements appearing upon a negotiable Instrument were made in the order in which they appear thereon
- 6- that a lost Negotiable Instrument was duly stamped
- 7- that the holder of a negotiable Instrument is a holder in due course; provided that, where the Instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

#### **Article 105. proof of protest against dishonored instrument**

In a suit upon an Instrument which has been dishonoured, the protest which has done, presume the fact of dishonour, unless such fact is disproved.

#### **Article 106. Estoppel against denying original validity of Instrument**

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honor of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the Instrument as originally made or drawn.

**Article 107. Estoppel against denying capacity of payee to indorse**

No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the promissory note or bill, to indorse the same.

**Article 108. Estoppel against denying signature or capacity of prior party to Negotiable Instrument**

No indorser shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the Instrument.

**Chapter 14**

**Special Provisions Relating to Cheques**

**Article 109. Revocation of banker's authority**

The duty and authority of a banker to pay a cheque drawn on him by his customer' are revoked by:

- (1) Countermand of payment
- (2) Notice of the customer's death
- (3) Notice of adjudication of the customer as an insolvent or bankrupt

**Article 110. Crossing a material part of a cheque**

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

**Article 111. Cheque crossed generally**

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

**Article 112. Cheque Account “Account payee”**

(1) Where a cheque crossed generally bears across its face an addition of the words “account payee” between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed “account payee”.

(2) A cheque is crossed “account payee” has the following effect:

- 1- It shall cease to be negotiable, and
- 2- It shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.

**Article 113. Cheque crossed specially**

Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

**Article 114. Crossing after issue**

- (1) Where a cheque is uncrossed, the holder may cross it generally or specially.
- (2) Where a cheque is crossed generally, the holder may cross it specially.
- (3) Where a cheque is crossed generally or specially, the holder may add the words “not negotiable”.
- (4) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.
- (5) When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

**Article 115. Payment of cheque crossed specially more than once**

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

**Article 116. Payment in due course of crossed cheque**

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

whom it is crossed or his agent for collection, being a banker, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

**Article 117. Payment of crossed cheque out of due course**

- (1) Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
- (2) 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, added to or altered otherwise than as authorized by this Law, the banker paying the cheque in good faith and without negligence shall not be responsible .

**Article 118. Cheque bearing “not negotiable”**

A person taking a cheque crossed generally or specially, bearing in either case the words “not negotiable,” his right to negotiate the instrument would be limited accordingly.

**Article 119. Non-liability of banker receiving payment of cheque**

Subject to the provisions of this Law relating to cheques crossed “account payee”, where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

Such a banker may credit his customer’s account with the amount of the cheque before receiving payment thereof

**Article 120. Crediting cheque crossed “account payee”**

Where a cheque is delivered for collection to banker which does not at the time of such delivery appear to be crossed “account payee” or to have had a crossing “account payee” which has been obliterated or altered, the banker, in good faith and without negligence collecting payment of the cheque and crediting the proceeds thereof to a customer, shall not incur any liability by reason of the cheque having been crossed “account payee” or of such crossing having been obliterated or altered, and of the proceeds of the cheque having been credited to a person who is not the payee thereof.

## **Chapter 15**

### **Special Provisions Relating to Bills of Exchange**

#### **Article 121. Several drawees**

A bill of exchange may be addressed to two or more drawees, whether they are partners or not; but an order which specifies two optional drawees to a holder, or two or more drawees in succession, is not a bill of exchange.

#### **Article 122. Drawing a bill in favour of drawer or drawee**

A bill of exchange 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.

#### **Article 123. When presentment for acceptance is necessary**

A bill of exchange, in order to fix the acceptor with liability, must be presented for acceptance before it is presented for payment.

#### **Article 124. When presentment excused**

Presentment of bill for acceptance is excused where:

- 1- The drawee is dead, is insolvent, is a fictitious person or a person not having capacity to contract to the bill of exchange
- 2- At the due date for presentment, the drawee cannot, after reasonable search, be found at the place at which the bill is to be presented
- 3- After the exercise of reasonable diligence, such presentment cannot be effected

#### **Article 125. Holder's right of recourse against drawer and indorsers**

Subject to the provisions of this Law, when a bill of exchange is dishonoured by non-acceptance, a right of recourse against the drawer and indorser accrues to the holder.

#### **Article 126. Holder may refuse qualified acceptance**

The holder of a bill of exchange may refuse to take a qualified acceptance, and, if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.

#### **Article 127. Set of bills**

(1) Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set, but the whole set constitutes only one bill, and

is extinguished when one of the parts would be extinguished.

(2) When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

(3) As between holders in due course of different parts of the same set, he who first acquired title to his part has priority to the other parts and the money represented by the bill.

## **Chapter 16**

### **Miscellaneous Provisions**

#### **Article 128. Law, governing liability of parties to a foreign Instrument**

In the absence of a contract to the contrary and subject to the provisions of this law, in the case of a foreign Negotiable Instrument:

(1) The law of the place where the Instrument was made, drawn, accepted or negotiated shall determine the capacity of the parties, validity of the Instrument or, as the case may be, of its acceptance or negotiation:

Provided that such Instrument shall not be invalid or inadmissible in evidence by reason only that it was not stamped or not sufficiently stamped according to the law of the place where it was made or drawn

(2) The law of the place where such Instrument is payable shall determine:

- The liability of all parties thereto
- The duties of the holder with respect to presentment for acceptance or payment
- The date of maturity of the Instrument
- What constitutes dishonour
- The necessity for and sufficiency of a protest or notice of dishonour, and
- All questions relating to payment and satisfaction including the currency in which and the rate of

#### **Article 129. Special treatment of negotiable Instruments outside Afghanistan**

If a negotiable Instrument is made, drawn, accepted or indorsed outside Afghanistan, but expressed as in accordance with the law of Afghanistan, the circumstance that any agreement evidenced by such Instrument is invalid according to the law of the country wherein it was entered into, does not invalidate any subsequent

acceptance or indorsement made thereon within Afghanistan.

**Article 130. Fees and Financial penalties**

- (1) bank charges, financial penalties and other rules relating to dishonoured cheques under this Law shall be regulated by Da Afghanistan Bank.
- (2) For the purpose of better implementation of this Law, Da Afghanistan Bank may establish and apply appropriate procedures and regulations which are not inconsistent with provision of this law.

**Article 131. Existing Instruments**

Negotiable Instruments that are drawn and made before enforcement of this law and existing on the Effective Date of this Law are presumed subject to its provisions

**Article 132. priority of Laws**

In case of conflict of laws, the provisions contained in this Law shall prevail.

**Article 133. Effective Date**

This Law shall take effect on the Effective Date, and published in official gazette. As of the Effective Date, provisions of Subchapters A, B and C under Chapter III of the Commercial Code of 1955 official gazette number 89 hereby declared null and void.