

Negotiable Instruments Act, 2034 (1977)

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Amendment

Finance Related Some Nepal Acts Amendment

Act, 2039 (1982)

2039/7/3 (October 19, 1982)

Act Number 26 of 2034 (1977)

An Act Made to Provide For Matters Relating to the

Negotiable Instruments

Preamble: Whereas, it is expedient to define negotiable instrument and make other arrangements relating to it in order to systematize the banking transaction,

Now, therefore, be it enacted by His Majesty King Birendra Bir Birkram Shah Dey on the advice and with the consent of the *Rastriya Panchayat*.

Chapter-1

Preliminary

1. **Short Title, Extent and Commencement:** This Act may be called "Negotiable Instruments Act, 2034" (1977).

(2) This Act shall extend to all over the Nepal.

(3) This Act shall come into force from such date as Government of Nepal may, by a Notification published in the Nepal Gazette, appoint. ✍

2. **Definitions:** Unless the subject or context otherwise requires, in this Act,-


(a) "Bank" means the bank established pursuant to the prevailing

laws.

- (b) "Bankers" means the organization performing the banking occupation and this term also includes the post office operating the functions of a saving bank.
- (c) "Security" means the property or document relating to it which is kept or to be kept as security while taking or giving loans.
- (d) "Negotiation" means the act of transfer of Negotiable Instruments to any person so as to constitute that person the holder thereof.
- (e) "Negotiable Instruments" means a Promissory Note and Bill of Exchange.
- (f) "Promissory Note" means an instrument in writing except government or Bank note containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to, or to the order of, a certain person, or to the bearer of the instrument.

Provided that, this word shall not include the document prepared pursuant to the Chapter of Transaction of the *Muluki Ain* (General Code).

- (g) "Bill of Exchange" means an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money to, or to the order of a certain person or to the bearer of the instrument in a certain date or after certain period of time or at the demand.
- (h) "Cheque" means a Bill of Exchange drawn on a certain Bank payable on demand.
- (i) "Draft" means a Bill of Exchange drawn by a Bank payable on

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(Nepal Gazette-
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demand from its one Office to another Office to, or to the order of a certain person.

- (j) "Payee" means the person named in the instrument to whom or to whose order the money is by the instrument directed to be paid.
- (k) "Holder" means a person entitled in his own name to the possession of a Negotiable Instrument and to receive the amount due on it.
- (l) "Drawer" means a person who makes or draws a Bill of Exchange.
- (m) "Drawee" means a person thereby directed for the payment of the Bill of Exchange.
- (n) "Alternative Drawee" means a person mentioned or endorsed in the Bill of Exchange, to be contacted in case the Drawee does not accept the Bill of Exchange or gives the payment.
- (o) "Holder in due Course" means a person having entitlement upon the Negotiable Instrument according to law, in the case of a Negotiable Instrument payable to a bearer, and the Payee or a person endorsed by him, in the case of a Negotiable Instrument payable to the ordered person.

Provided that, such entitlement must have received or endorsed before the maturity of such Negotiable Instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

- (p) "Payment in due Course" means payment in accordance with the apparent tenor of the Negotiable Instrument in good faith and without negligence to any person in possession thereof.
- (q) "Endorsement" means the act of signing on the Negotiable Instrument for the purpose of Negotiation, on the face or back or

on the document or a slip of paper annexed thereto.

- (r) "Endorsement in Blank" means the Endorsement having signed only the name of the endorser.
- (s) "Endorsement in Full" means the Endorsement which contains the direction to pay the amount mentioned in the instrument to, or to the order of a specified person.
- (t) "Bill of Exchange Payable on Demand" means a Bill of Exchange which is payable on demand or at sight or on presentment.
- (u) "Maturity" means the date at which a Bill of Exchange falls due.
- (v) "Public Holiday" means the day declared by Government of Nepal to be a public holiday and it includes the day on which the Banking business does not take place.
- (w) "Notary Public" means a person appointed or designated pursuant to Section 106.
- (x) "Prescribed" or "as Prescribed" means prescribed or as prescribed in this Act or Rules made thereunder.

Chapter-2

Negotiable Instruments, its Party and His Rights and Liabilities

3. **Ambiguous Negotiable Instrument:** Where a Negotiable Instrument may be construed either as a Promissory Note or Bill of Exchange the Holder may at his /her election treat it as either.
4. **Rights of the Holder:** The Holder may transfer the Negotiable Instrument.
5. **Negotiable Instrument Without Payment Date:** Payment of the Negotiable Instrument in which the payment date is not written shall be made on demand.
6. **Difference Between Figure and Letter:** In case there is difference

between the figure and letter of the amount to be paid on the Negotiable Instrument, the amount written in the letter shall be the amount to be paid.

7. **The Additional Time Limit:** Payment of the Negotiable Instrument on which it is not written that payable on demand or at sight or on presentment shall be on the fourth day from the date of payment.
8. **Payment after the Specified Period:** Payment of the Negotiable Instrument payable on a specified day or after the specified period of presentment or after the happening of any inevitable event or after the specified period of the happening of such event shall be as mentioned in such instrument.
9. **Calculation of the Date of Maturity:** While calculating the date of payment of the Negotiable Instrument to be payable after a specified period, it is calculated by excluding the day written in the Negotiable Instrument or the day of presentment for the acceptance.
10. **When Day of Maturity is a Holiday:** When the day on which a Negotiable Instrument is at maturity is a Public Holiday, the instrument shall be deemed to be due on the next preceding business day.
11. **Capacity of Parties:** Any person, who is capable of contracting under the prevailing law, may make, draw, accept, endorse, negotiate etc. of the Negotiable Instrument and all parties shall be liable for it.

Provided that, if such act has been done by the minor, all parties accept him/her shall be liable.

12. **Agent:** For the acts done by an agent, the principal who has authorized him/her to do such act shall be liable.
13. **Liability of an Agent:** If an agent who signs his/her name to a Negotiable Instrument without indicating thereon that he/she signs as an agent, or he does not intend thereby to incur personal responsibility, is liable personally to such Negotiable Instrument.

14. **Liability of an Heir:** If a person who signs his/her name to a Negotiable Instrument as an heir of a deceased person is fully liable personally thereon unless he/she expressly limits his liability to the extent of the assets received by him as such.
15. **Liability of Drawer:** In case the Drawer has been provided due notice of dishonour of the Bill of Exchange by the acceptor or Drawee, it shall be the duty of the Drawer to Compensate the Holder.
16. **Liability of the Bank Giving Payment of the Cheque:** The Bank having sufficient funds of the Drawer in the account, properly applicable to the payment of the Cheque must pay the Cheque, and, in default of such payment must compensate the Drawer or Holder in due Course for any loss or damage caused by such default pursuant to this Act.
17. **Liability of Maker of Promissory Note and Acceptor of Bill of Exchange:** The maker of a Promissory Note or the acceptor of Bill of Exchange is bound to pay the amount thereof at Maturity when the Negotiable Instrument is duly presented for the payment. In default of such payment, the maker of the Promissory Note or the acceptor of the Bill of Exchange is bound to compensate any party payable for any loss or damage sustained by him and caused by such default.
18. **Person Capable to Accept the Bill of Exchange:** (1) No person except the Drawee or Alternative Drawee of a Bill of Exchange can accept the Bill of Exchange in his responsibility.

(2) In case there are more than one Drawee in the Bill of Exchange, any one Drawee may accept the Bill of Exchange only in his/her own favour.

Provided that, in case the Drawees of a Bill of Exchange who are partners or authorised, one can accept it for another.
19. **Liability of Endorser:** Any person who indorses and delivers a

Negotiable Instrument expressly limiting or excluding his/her own liability, shall be responsible to every subsequent Holder except otherwise a contract is made thereto.

20. **Liability of the Parties to Holder in Due Course:** Every prior party to a Negotiable Instrument is liable thereon to a Holder in due Course until the instrument is duly satisfied.
21. **To be Equivalent to Principal Debtor:** The maker or Drawer of the Negotiable Instrument until acceptance, and the acceptor are in the absence of a contract to the contrary respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, Drawer or acceptor, as the case may be.
22. **Prior party to be Equivalent to Principal Debtor in Respect of each Subsequent Party:** As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, liable thereon as a principal debtor in respect of each subsequent party.
23. **Liability of Surety:** Notwithstanding anything contained in the prevailing laws, the surety of Bill of Exchange cannot take stand that only in case the realization could not be possible from the property of the principal debtor, shall be realized from his/her property, it can be directly realized from the person being a surety.
24. **Discharge of Endorser's Liability:** If the Holder without the consent of the endorser impairs the remedy against a prior party, the endorser is discharged from Liability to the Holder.
25. **Bound to be Responsible:** An Acceptor of a Bill of Exchange already indorsed is not relieved from liability by reason that such Endorsement is forged, if he knew or had reason to believe the Endorsement to be forged when he/she accepted the bill.
26. **Negotiable Instrument without Consideration:** A Negotiable Instrument made, accepted, indorsed or transferred without

consideration against the prevailing law creates no obligation of payment between the parties to the transaction. If any person has transferred such Negotiable Instrument with or without Endorsement to a Holder for consideration, such Holder deriving title for him/her, may recover the amount due on such Negotiable Instrument from the transferor for consideration or any prior party thereto.

27. **Duplicate to be Given**: In case the Holder who has lost the Negotiable Instrument requests for obtaining the duplicate of the lost Negotiable Instrument the Drawee or maker of the Bill of Exchange shall have to give him/her the aforesaid duplicate by taking required security and the expenditure incurred for the preparation of the duplicate.

chapter - 3

Negotiation and Indorsement

28. **Delivery**: The function of making, acceptance or endorsement of a Negotiable Instrument shall be regarded to be completed only after its delivery.
29. **Negotiation by Delivery**: A Negotiable Instrument payable to bearer is negotiable by delivery thereof. If the Negotiable Instrument is payable to the person written on the instrument or to one ordered by him/her, such instrument should be indorsed by the Holder.
30. **Effect of Indorsement**: The right shall be transferred after the Endorsement of a Negotiable Instrument followed by delivery. The Holder may give such instrument to any other by indorsing it or receive payment by himself.
31. **Change of Indorsement**: The Holder of any Negotiable Instrument having general Endorsement may change the general Endorsement into special Endorsement.
32. **Restriction can be Imposed to Indorse**: While indorsing the Negotiable Instrument, restriction can be imposed in the right of the

Holder to indorse in a way that such instrument cannot be re-indorsed or to be done only according to as mentioned in the Endorsement.

Provided that, such restriction cannot be imposed in the case of a Negotiable Instrument payable to bearer.

33. **Holder Deriving Title from Holder in due Course**: A Holder of a Negotiable Instrument who derives title from a Holder in due Course has the rights thereon of that Holder in due Course.
34. **Endorsement or Negotiation can be Done**: Every party of the Negotiable Instrument can indorse or negotiate such instrument except it is restricted pursuant to Section 32.
35. **Endorsement can be done Whithout Persisting Liability**: The endorsee can indorse by clearly stating the matter that his liability shall not persist on the Negotiable Instrument.
36. **Indorsement For Part of Sum Due**: No Negotiable Instrument can be negotiated which is indorsed to transfer only a part of the amount appearing to be due on the instrument.
37. **Negotiation by the Heir**: In case the endorsee is dead before its delivery, the heir of the deceased also cannot negotiate the instrument by delivery only without the Endorsement.
38. **Negotiable Instrument Obtained by Unlawful Means**: The person obtaining a Negotiable Instrument by means of any offence or fraud or unlawful consideration or the person, who found the lost Negotiable Instrument, cannot make a claim upon the amount mentioned on such instrument with Drawer, acceptor or Holder of such Negotiable Instrument.
39. **Negotiable Instrument Acquired after Dishonour or when Over Due**: The Holder of a Negotiable Instrument, who has deliberately acquired it after dishonour, whether by non-acceptance or non-payment or after Maturity, has only the rights thereon of his/her transferor of

such instrument.

Chapter-4

Of Presentment

40. Presentment for Acceptance: A Bill of Exchange payable after presentment must be presented to the Drawee thereof for acceptance, in business hours on a business day. If no time or place is specified therein for presentment of Bill of Exchange it must be presented to the Drawee thereof for acceptance, if he/she can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default,

Provided that, if the Drawee cannot, after reasonable search, be found, the Bill of Exchange is deemed to be dishonoured.

41. Drawee to Have Time: The Holder must, if demanded by the Drawee of a Bill of Exchange presented to him/her for acceptance, allow the Drawee two days, exclusive of Public Holiday, to consider whether he/she will accept it.

42. Presentment of Promissory Note: A Promissory Note, payable at a certain period after sight must be presented to the maker thereof for sight by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment no party thereto is liable thereon to the person making such default.

43. Presentment for Payment: Promissory Notes, Bills of Exchange and Cheques, must be presented for payment to the maker, acceptor or Drawee thereof respectively, by or on behalf of the Holder within the business hours, In default of such presentment, the other parties thereto are not liable thereon to such Holder.

44. Negotiable Instrument Payable at Specified Place: A Negotiable

Instrument mentioned as payable at a specified place must be presented for payment at that place.

45. **Negotiable Instrument Without Mentioning Place of Payment:** If the place of payment is not stated by the maker, acceptor or Drawer, a Promissory Note must be presented to the maker and the Bill of Exchange to its acceptor or Drawee in his place of business or residence.
46. **In case the place of Business or Residence is not Fixed:** If the maker, acceptor or Drawee of a Negotiable Instrument has no fixed place of business or residence presentment of such instrument for payment or acceptance may be made to him/her in person wherever he/she can be found.
47. **Presentment of Cheque to Charge Drawer:** (1) No person can charge the Drawer without presentment of a Cheque at the Bank upon which it is drawn.
- (2) If any damage is caused to any person due to the reason of default of presentment of Cheque within a reasonable time, the amount of such damage cannot be charged with the Drawee.
48. **Excuse for Delay in Presentment:** Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the Holder, and not imputable to his/her misconduct, negligence or default.
- Provided that, when the cause of delay ceases to operate, presentment of the Negotiable Instrument for the acceptance or payment must be made within a reasonable time.
49. **To be Presented within a Reasonable Time:** The Holder of a Negotiable Instrument payable on demand must present such instrument for the payment within the reasonable time.
50. **Presentment May be Made to the Agent of Heir:** Presentment for

acceptance or payment may be made to the agent of the maker, acceptor and Drawee respectively.

Provided that, if the maker, acceptor or Drawee has died, such instrument must be presented to his/her heir.

51. Situation to be Arised When Presentment is not Made for the

Payment: The Negotiable Instrument shall be deemed to be dishonoured in the following situation and no presentment is necessary for its payment:-

- (a) If the maker, acceptor or Drawee deliberately prevents the presentment of the Negotiable Instrument, or
- (b) If the instrument being payable at the specified place, neither the payer or his Agent to pay it attends at such place during the business hours on a business day, or
- (c) If the payer closes his/her office during the business hours on a business day, or
- (d) If the Negotiable Instrument not being payable at any specified place, the concerned party cannot be found for the presentment after due search.

52. Compensation to be Given for Negligence or Mistake: When a Bill of Exchange accepted, payable at a specified Bank, has been duly presented there for the payment and dishonoured in a way to cause loss to the Holder, such Banker must compensate the Holder pursuant to this Act.

Chapter-5

On Payment, Interest and Discharge From Liability

53. Payment: Subject to the provisions of Section 56, payment of the amount due on a Negotiable Instrument must be made to the Holder.

Provided that, the Bank shall not be bound to give payment of a

Cheque or Draft drawn upon the Bank is not made presentment for its payment within Six months from the date at which it is drawn.

54. **Interest:** Notwithstanding anything contained in the prevailing laws, if a rate of interest is specified in the Negotiable Instrument, it will be calculated at such rate.

Provided that, while computing the interest for giving compensation or recovering loss, it shall be calculated by the maximum rate of interest to be charged by the commercial Bank in the loan extended by it.

55. **Negotiable Instrument to be Delivered on Payment:** The payer may see the Negotiable Instrument before its payment and keep such instrument with him/her on its payment.

56. **Discharge From Liability:** The Drawer, acceptor or endorser of a Negotiable Instrument shall be discharged from his/her liability in the following conditions:-

- (a) If the Holder intentionally cancels the name of the acceptor or endorser with intent to discharge him/her to such Holder and all parties claiming through such Holder.
- (b) If a Holder thereof who otherwise discharges such acceptor or endorser or Drawer and to all parties deriving title under such Holder after notice of such discharge.
- (c) If the Negotiable Instrument is payable to bearer or has been indorsed in blank and such Drawer, acceptor or endorser makes Payment in due Course of the amount due thereon is discharged to all concerned parties thereto related with such Negotiable Instrument.

57. **Discharge From the Liability by Allowing Additional Time:** If the

Holder allows the acceptor of a Negotiable Instrument a period of more than two days, exclusive of Public Holiday to consider whether he/she will accept the same, all prior parties not consenting to such allowance are thereby discharged from the liability to such Holder.

58. Discharge From Liability of Cheque Payable to the Bearer or

Ordered Person: The Drawee shall be discharged from his/her liability in the case of a bearer's Cheque by Payment in due Course to the bearers thereof, notwithstanding any Indorsement on the back side of the Cheque and in the case of a Cheque payable to order purports to be indorsed by or on behalf of the Payee, by Payment in due Course.

59. Discharge From Liability of Payment of Draft:

When a Draft drawn by one office of a Bank upon another office of the same Bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the Payee, the Bank is discharged by Payment in due Course.

60. Acceptance with Conditions:

If consent is given to the acceptance with conditions made by the Holder of a Bill of Exchange all other prior parties except the party who gave consent to such conditions, shall be discharged from the liability.

61. Alteration or Scratching and Erasing in the Bill of Exchange:

If alteration or scratching and erasing has been made in the Negotiable Instrument except any material alteration or scratching and erasing has been made in the Negotiable Instrument by the main parties thereon with unanimous intention, all other prior parties except the party who gave consent to such alteration or scratching and erasing shall be discharged from the liability.

Explanation: "Alteration or scratching and erasing" means the functions of alteration or scratching and erasing in a way that another meaning in the Negotiable Instrument to be given or the appearance of

the Negotiable Instrument to be changed or the liability of the concerned parties to be changed.

62. **Payment of Negotiable Instrument on which Scratching and Erasing or Alteration is not Apparent:** When a Negotiable Instrument has been materially scratched and erased or altered but does not appear to have been such things or crossing does not appear in a cross Cheque, Payment in due Course shall discharge such person or Bank from his/her or its liability thereon.
63. **All Parties to be Discharged From the Liability:** If a Negotiable Instrument which has been negotiated is, at or after maturity, held by the acceptor in his own right, all other parties shall be discharged from the liability related with that instrument.

Chapter - 6

Of Notice of Dishonour

64. **Dishonour by Non-Acceptance:** (1) A Bill of Exchange shall be deemed to be dishonoured by non-acceptance when the Drawee, or one of several Drawees not being partners, makes default in acceptance upon being duly required to accept the bill.
- (2) If agreed to accept the bill with conditions or the Drawee is incompetent to contract, the Bill of Exchange shall be deemed to be dishonoured.
65. **Dishonour by Non-Payment:** A Promissory Note, Bill of Exchange or Cheque shall be deemed 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.
66. **Notice of Dishonour:** When a Bill of Exchange is dishonoured by non-acceptance or non-payment, the Holder thereof, or some party thereto who remains liable thereon, must give notice to all other parties related to such instrument, and if any party among them has not been noticed,

such party shall not be liable to that instrument.

Provided that, nothing in this section renders it necessary to give notice of dishonour to the maker of the Promissory Note, acceptor of the Bill of Exchange or the Drawee.

- 67. Mode in which Notice May be Given:** Notice of dishonour may be given to a person to whom it is required to be given or to his/her duly authorized agent or, where he/she has died, to his/her heir, may be oral or written. While giving written notice, it can be sent by post and may be in any form. In such notice it must be informed to the party to whom it is given, either in express terms or reasonable intendment, that the Negotiable Instrument has been dishonoured and he /she will be held liable thereon and it must be given within reasonable time, at his place of business or residence. If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.
- 68. The Agent to Have Time to Give Notice of Dishonour:** When the Negotiable Instrument is deposited with an agent for presentment, the agent is entitled to give notice to the concerned principal party as if he were the Holder giving notice of dishonour.
- 69. When Party to Whom Notice Given is Dead:** When the party to whom notice of dishonour is despatched is dead, and the party despatching the notice is ignorant of his/her death, the notice shall not be invalid.
- 70. When Notice of Dishonour is Unnecessary:** No notice of dishonour is necessary in the following conditions:-
- (a) When it is dispensed with by the party entitled thereto,
 - (b) When the Drawer has countermanded payment,
 - (c) When the party has not suffered damage for want of notice,
 - (d) When the acceptor is also a Drawer,

- (e) In the case of a Promissory Note which is not negotiable.
- (f) When the party entitled to notice cannot after due search be found, or the party bound to give notice, is for any other reason, unable without any fault of his/her own to give it,
- (g) When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the Negotiable Instrument.

71. The Facts of Dishonour Can be Caused to be Noted by Notary

Public: When a Negotiable Instrument has been dishonoured by non-payment or non-acceptance, the Holder may complain such dishonour to the Notary Public within a reasonable time and may cause to be noted the particulars of dishonour by the Notary Public upon the instrument, or upon a paper attached thereto. The date of dishonour and the reason assigned for such dishonour must be specified while causing to note and if the instrument has not been expressly dishonoured, the reason why the Holder treats it as dishonoured also shall have to be expressed clearly.

72. The Facts of Dishonour May be Taken by Certifying it: The Holder may take the facts of dishonour to be certified by the Notary public after it is noted pursuant to Section 71.

73. Protest For Additional Security: When the acceptor of a Bill of Exchange has become insolvent, before the Maturity of the Bill of Exchange, the Holder may, within a reasonable time, cause a Notary Public to demand additional security of the acceptor and on its being refused may, within a reasonable time, cause such facts to be noted and certified.

74. Contents of Protest: The protest in relation to dishonour or refusal for additional security must contain the following particulars:-

- (a) The Negotiable Instrument or its duplicate and of everything

written or printed thereupon,

- (b) The name of the person for whom and against whom the instrument has been protested,
 - (c) A statement that payment or acceptance, or additional security, as the case may be, has been demanded of such person by the Notary Public, the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found,
 - (d) When the Negotiable Instrument has been dishonoured, the place and time of dishonour, and when additional security has been refused, the place and time of refusal.
75. **Notice of Protest:** When a Negotiable Instrument is required by any prevailing law to be protested, notice of such protest must be given instead of notice of dishonour. The notice may be given by the Notary Public also who makes the protest.
76. **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 the payment.
77. **Protest of Foreign Bills of Exchange:** Foreign Bills of Exchange must be protested for dishonour when such protest is required by the law of the country where they are drawn, the protest of dishonour of such Bills of Exchange also must be caused by the Notary Public.

Chapter - 7

On Reasonable Time

78. **Determination of Reasonable Time:** In determining the reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of such Bills

of Exchange and the usual course of dealing with respect to similar instruments, and, in calculating such time Public Holiday shall be excluded.

79. Determination of Reasonable Time of Giving Notice of Dishonour:

If the Holder and the party to whom notice of dishonour is given carry on business or live in different places such notice is given within reasonable time if it is dispatched by the registered letter through the post or by any other means on the day next after the day of dishonour. If both the parties carry on their business or line in the same place, such notice is given within a reasonable time if it is dispatched in time to reach its destination the day next after the day of dishonour.

80. Reasonable Time to Give Notice to Make Liable to the Prior Party:

A party receiving notice of dishonour, who seeks to enforce his/her right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he/she would have had to give notice if he/she had been the Holder.

Chapter-8

Of Crossed Cheques

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

82. Special Crossed Cheque: Where a Cheque bears across its face an addition of the name of a Banker, either with or without the words "not negotiable" and the Cheque shall be deemed to be specially crossed.

83. Crossing after Issue: (1) Where a Cheque is uncrossed, the Holder may make it general or special crossed Cheque.

(2) Where a Cheque is general crossed Cheque, the Holder may

make it special crossed Cheque.

(3) Where a Cheque is general or special crossed Cheque, 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 especially to another Banker or his agent for collection.

84. Payment of Crossed Cheque: (1) Where a Cheque is crossed generally, the Banker on whom it is drawn shall not pay it otherwise than to a Banker.

(2) 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 /her agent for collection.

85. Payment of a Cheque Bearing "Account Payee": The Banker shall make the payment of a crossed Cheque bearing the words "account payee" only by depositing the amount in the account of the person on whose name the Cheque is drawn.

86. 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.

87. Payment in due Course of Crossed Cheque: Where the Banker on whom a crossed Cheque is drawn has paid the same in due course, the Banker paying the Cheque, and 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 has been paid to and received by the true owner thereof.

88. Payment of Crossed Cheque Out of Due Course: Any Banker paying a crossed Cheque without completing the procedures of Section 84 and

85, shall be liable to the true owner of the Cheque for any loss he/she may sustain owing to the Cheque having been so paid.

89. **Cheque Bearing "Not Negotiable"**: A person taking a Cheque Crossed generally or specially bearing in either case the words "not negotiable" shall not have, and shall not be capable of giving a better title to the Cheque than that which the person from whom he took it had.
90. **Non-Liability of Banker Receiving Payment of Cheque**: A Banker who has in good faith and without negligence received payment from customer of a crossed Cheque to him/herself shall not, in case the title to the Cheque proves defective, incur any liability to the true owner of the Cheque by reason only of having received such payment.
91. **Application of this Chapter to Drafts**: The provisions of this Chapter shall apply to any Draft as if the Draft were a Cheque.

Chapter -9

Miscellaneous

92. **Acceptance For Honour**: When a Bill of Exchange has been protested for non-acceptance or for additional security, from the Notary Public, any person not being a party liable thereon may, with the consent of the Holder, accept the same for the honour of any party thereto.
93. **How Acceptance For Honour Must be Made**: A person desiring to accept for honour must, by writing on the Bill of Exchange itself under his/her hand, declare that he/she accepts for the honour of the Drawer or of a particular endorser whom he/she names. In case such name is not mentioned the acceptance shall be deemed to be done for the honour of the Drawer.
94. **Liability of Acceptor for Honour**: (1) An acceptor for honour binds him/herself to all parties subsequent to the party for whose honour he/she accepts to pay the amount of the bill if the Drawee do 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/her in consequence for such acceptance.

Provided that, an acceptor for honour is not liable for the Bill of Exchange unless such Bill of Exchange is presented to him.

(2) An acceptor for honour may be Charged unless the Bill of Exchange has at its Maturity been presented to the Drawee for payment, and has been dishonoured by him/her, and protested by the Notary Public for such dishonour.

- 95. Payment For Honour:** (1) When a Bill of Exchange has been caused to be protested by the Notary Public for non-payment, any person may pay the same for the honour of any party.

Provided that, the person so paying or his/her agent must cause to be noted in the record of the Notary Public that for whose honour the payment has been made before giving such payment.

(2) Any person making payment pursuant to Sub-section (1) is entitled to all the rights, in respect 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.

- 96. Alternative Drawee in case of Need:** Where an Alternative Drawee in case of need is named in a Bill of Exchange, or in any Indorsement thereon, the Bill of Exchange is not dishonoured until it has been dishonoured by such Drawee.

- 97. Acceptance and Payment Without Protest:** The Alternative Drawee in case of need may accept and pay the Bill of Exchange without previous protest by a Notary Public.

- 98. Sets of Bills of Exchange:** Bills of Exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue 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, if a separate bill, would be extinguished.

- 99. Provisions Relating to the Foreign Negotiable Instrument:** In the absence of a contract to the contrary, the liability of the maker or Drawer of a foreign Negotiable Instrument is regulated in all essential matters by the law of the country where the instrument was made and the respective liabilities of the acceptor and endorser by the law of the country where the instrument is made payable.
- 100. Law of the Country of Payment Governs Dishonour:** Where a Negotiable Instrument is made payable in a different country from that in which it is made or indorsed, the law of the country where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.
- 101. Validity of Bill of Exchange Made or Drawn in Foreign Country:** If a Negotiable Instrument is made drawn, accepted or endorsed outside Nepal, but in accordance with Nepalese Law, 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 endorsement made thereon within Nepal.
- 102. Presumption as to Foreign Law:** The law of any foreign country regarding Negotiable Instrument shall be presumed to be the same as that of Nepal Law, unless and until the contrary is proved.
- 103. Special Provisions Relating to the Evidence:** Until the contrary is proved, the following presumptions shall be made:-
- (a) 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 in

accordance with the prevailing law,

- (b) that every Negotiable Instrument bearing a date was made or drawn on such date,
- (c) that every transfer of a Negotiable Instrument was made before its Maturity,
- (d) that every accepted Bill of Exchange was accepted within a reasonable time after its date and before its Maturity,
- (e) that the Indorsements appearing upon a Negotiable Instrument were made in the order in which they appear thereon,
- (f) that the Holder of a Negotiable Instrument is a Holder in due Course.

Provided that, the burden of proving that the Holder is a Holder in due Course lies upon him/her in the following conditions:-

- (1) Where the Negotiable Instrument has been obtained from its lawful owner or from any person in lawful custody thereof by means of an offence or fraud,
- (2) Where the Negotiable Instrument has been obtained from the maker, Drawer or acceptor thereof by means of an offence or fraud, or for unlawful consideration.

104. Estoppel Against denying Capacity of Payee to Indorse: No maker or Drawer of the Negotiable Instrument and the acceptor for the honour of the Drawer shall, in a suit thereon by a Holder in due Course, be permitted to deny the Payee's capacity, at the date of the Negotiable Instrument, to indorse the same.

105. Estoppel Against Denying Signature or Capacity of Prior Party: No endorser of a Negotiable Instrument 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 Negotiable Instrument.

106. Appointment of the Notary Public: Government of Nepal may, by a Notification published in the Nepal Gazette, appoint a Notary Public for the work to be done by the Notary Public or may designate any Officer to do such work.

✓**106A. Provisions Relating to the Notary Public:** Qualification, certificate, conduct and fees of the Notary Public and the other procedures of the Notary Public shall be as prescribed.

✓**106B. Removal of the Notary Public:** Government of Nepal may remove the Notary Public in prescribed conditions.

107. Determination of Compensation: The compensation payable in case of dishonour of a Negotiable Instrument, by any party liable to the Holder or any endorsee shall be determined as follows:-

- (a) The Holder is entitled to the amount, together with the expenses properly incurred in presenting, noting and protesting it.
- (b) An endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest from the date of payment until realization thereof.

✓**107A. Penalty:** In case any person who deliberately transfers a Cheque by drawing it to some body that he/she does not bear deposit in the Bank or even if there is a deposit which is not sufficient, and if the Cheque thus transferred is dishonoured due to lack of sufficient deposit when the Cheque is presented to the concerned Bank for the payment, the amount mentioned in the Cheque as well as interest on it shall be caused to be recovered to the Holder from the Drawer and he/she shall be punished with an imprisonment up to Three months or a fine up to

✓ Inserted by the Finance Related Some Nepal Acts Amendment Act, 2039 (1982)

Three Thousand Rupees or both.

108. Limitation: No complaint relating to the Negotiable Instrument shall be valid which is not filed within five years from the date of cause of action to file such complaint.

109 Power to Frame Rules: Government of Nepal may Frame Rules to carry out the objectives of this Act.

NEPAL LAW COMMISSION

✓ Inserted by the Finance Related Some Nepal Acts Amendment Act, 2039 (1982)