



Bills of Exchange Act 1882

1882 CHAPTER 61

PART II

BILLS OF EXCHANGE

General duties of the Solder

39 When presentment for acceptance is necessary

- (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.
- (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
- (4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

40 Time for presenting bill payable after sight

- (1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.
- (3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

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41 Rules as to presentment for acceptance, and excuses f presentment

- (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:
 - (a) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:
 - (b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:
 - (c) Where the drawee is dead presentment may be made to his personal representative:
 - (d) Where the drawee is bankrupt, presentment may be made to him or to his trustee:
 - (e) Where authorised by agreement or usage, a presentment through the post office is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
 - (a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:
 - (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected:
 - (c) Where although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

42 Non-acceptance

- (1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

43 Dishonour by non-acceptance and its consequences

- (1) A bill is dishonoured by non-acceptance—
 - (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
 - (b) when presentment for acceptance is excused and the bill is not accepted.
- (2) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

44 Duties as to qualified acceptances

- (1) The holder of a bill 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.

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- (2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

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

45 Rules as to presentment for payment

Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the, following rules:—

- (1) Where the bill is not payable on demand, presentment must be made on the day it falls due.
- (2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

- (3) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as herein-after defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.
- (4) A bill is presented at the proper place:—
- (a) Where a place of payment is specified in the bill and the bill is there presented.
 - (b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
 - (c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.
 - (d) In any other case if presented to the drawee or acceptor wherever he can be found, or .if presented at his last known place of business or residence.
- (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
- (6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

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- (7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.
- (8) Where authorised by agreement or usage a presentment through the post office is sufficient.

46 Excuses for delay or non-presentment for payment

- (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with,—
 - (a) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment,
 - (b) Where the drawee is a fictitious person.
 - (c) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
 - (d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
 - (e) By waiver of presentment, express or implied.

47 Dishonour by non-payment

- (1) A bill is dishonoured by non-payment (a) when it is duly presented for payment and payment is refused or cannot be obtained, or (b) when presentment is excused and the bill is overdue and unpaid.
- (2) Subject to the provisions of this Act, when a bill is dishonoured by nonpayment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

48 Notice of dishonour and effect of non-notice

Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

- (1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.
- (2) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by nonpayment unless the bill shall in the meantime have been accepted.

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49 Rules as to notice of dishonour

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

- (1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.
- (2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.
- (3) Where the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it ensures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.
- (8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.
- (9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.
- (10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.
- (11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

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

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

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- (13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.
- (14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

50 Excuses for non-notice and delay

- (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.
- (2) Notice of dishonour is dispensed with—
 - (a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged:
 - (b) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice:
 - (c) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment:
 - (d) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

51 Noting or protest of bill

- (1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.
- (2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by nonpayment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

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- (3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
- (4) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.
- (5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.
- (6) A bill must be protested at the place where it is dishonoured: Provided that—
 - (a) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:
 - (b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.
- (7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—
 - (a) The person at whose request the bill is protested:
 - (b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.
- (8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.
- (9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52 Duties of holder as regards drawee or acceptor

- (1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.
- (2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.
- (3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.
- (4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.