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- (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.

### **57 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.

## **Division 6—Liabilities of parties**

### **58 Funds in hands of drawee**

A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

### **59 Liability of acceptor**

The acceptor of a bill, by accepting it:

- (a) engages that he will pay it according to the tenor of his acceptance; and
- (b) is precluded from denying to a holder in due course:
- (i) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; and
- (ii) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement; and
- (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

### **60 Liability of drawer or indorser**

- (1) The drawer of a bill, by drawing it:



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- (a) 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 is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken; and
- (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill, by indorsing it:

- (a) 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 a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken; and
- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements; and
- (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

### **61 Stranger signing bill liable as indorser**

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

### **62 Measure of damages against parties to dishonoured bill**

Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

- (a) The holder may recover from any party liable on the bill and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser:
  - (i) the amount of the bill;
  - (ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case; and
  - (iii) the expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.
- (b) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re exchange with interest thereon until the time of payment.
- (c) Where, by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.



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### 63 Transferor by delivery and transferee

- (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a transferor by delivery.
- (2) A transferor by delivery is not liable on the instrument.
- (3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

### OTHER RELEVANT LAW

Section 3, Rev. Code 1919; *Commercial Credit Co. v. Nissen*, 49 S.D. 303, 207 N.W. 61, 51 A.L.R. 287.

[2-4] We come then to a consideration of the contention that a drawee under the law merchant is rendered liable as an acceptor by retention of the check. When the Legislature in the enactment of a negotiable instruments law omitted section 137 of the uniform act, the inference is that it did not consider the section declaratory of the law merchant. We are convinced that this construction is correct in so far as that section declares that the drawee to whom a bill of exchange or check is delivered for acceptance will be deemed to have accepted if the Drawee within Twenty-four hours after delivery or within such other period as the holder may allow fails to return the bill or check, accepted or non Accepted. *Colo. Nat. Bank v. Boettcher*, 5 Colo. 185, 40 Am. Rep. 142; *Carr v. Nat. Sec. Bank*, 107 Mass. 45, 9 Am. Rep. 6; *Hibbard v. Parciak*, 94 Conn. 562, 109 A. 725; *Westberg v. Chicago Lbr. Coal Co.*, 117 Wis. 589, 94 N.W. 572; *Dan. Neg. Inst.* (7th Ed.) § 563. Under section 1839 the drawee has Twenty-four hours within which to determine the status of the drawer's account and to make other investigation, and after expiration of such time the holder of a bill of exchange may demand an acceptance or return of the instrument, but this section does not undertake to define the effect of Neglect or refusal to return.

Although banks may honor a stop payment request as an accommodation to their customers, "[s]ection 3-411 is designed to discourage this practice" by requiring the bank to compensate for expenses, loss of interest, and any consequential damages resulting from non-payment. COLO. REV. STAT. § 4-3-411, comment 1; see also Sheldon R. Shapiro, Annotation, Uniform Commercial Code: Bank's Right to Stop Payment on Its Own Uncertified Check or Money Order, 97 A.L.R.3d 714 (2010) (stating, "courts have often concluded that where a bank issuing its own check or money order is both the drawer and drawee, such issuance constitutes an 'acceptance,' after which there is 'no right to stop payment.'"). Allowing banks to stop payment on cashier's checks would "undermine the public confidence in the bank and its checks and thereby deprive the cashier's check of the essential incident [i.e., its cash equivalence] which makes it useful." *Flatiron Linen, Inc.*, 23

P.3d at 1213 (citation omitted). Thus, the "cashier's check [] represent[s] the unconditional obligation of the issuing bank to pay, and therefore, banks may not dishonor their cashier's checks once issued," except where the bank was fraudulently induced to issue the cashier's check. *Id.* (emphasis added); see also *Hotel Riviera, Inc. v. First Nat'l Bank and Trust Co. of Oklahoma City, Okla.*, 768 F.2d 1201, 1203-04



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(10th Cir. 1985) (directing lower court to enter judgment in favor of casino and against drawer bank, in light of the fact that a bank accepts its obligation to pay a cashier's check upon the check's issuance).

Additionally, "a bank may only assert its real and personal defenses in order to refuse payment on a cashier's check issued by the bank. It may not, however, rely on a third party's defenses to refuse payment," as Bank of Colorado attempts to do. *Warren Fin., Inc. v. Barnett Bank of Jacksonville, N.A.*, 552 So.2d 194, 201 (Fla. 1989); see also COLO. REV. STAT. § 4-3-305(a)(1) ("the right to enforce the obligation of a party to pay an instrument is subject to . . . fraud that induced the obligor to sign the instrument"); § 4-3-305(c) ("the obligor may not assert against the person entitled to enforce the instrument a defense . . . of another person"); *Anderson, Clayton Co. v. Farmers Nat'l Bank of Cordell*, 624 F.2d 105, 110 (10th Cir. 1980) (noting that a bank may assert the defense of fraud where it was fraudulently induced into issuing a cashier's check); *MidAmerica Bank, FSB v. Charter One Bank, FSB*, 905 N.E.2d 839, 846, 848 (Ill. 2009) (finding that bank, which had no knowledge of fraud, wrongfully dishonored cashier's check at the bank customer's stop payment request); *Patriot Bank, N.A. v. Navy Fed. Credit Union*, No. 199772, 2002 WL 481129, at \*4-\*5 (Va. Cir. Ct. Feb. 26, 2002) (unpublished) (finding that the credit union was liable for the amount of the cashier's check plus expenses where the remitter, not the bank, was defrauded); cf. *Khan v. Alliance Bank*, No. CL-2009-14692, 2009 WL 7416549, at \*2 (Va. Cir. Ct.

Dec. 22, 2009) (unpublished) (finding claims against bank for failure to pay cashier's check failed where cashier's check was obtained by fraud on the bank).

In the instant case, no evidence was presented that Bank of Colorado was fraudulently induced into issuing the Check; to the extent that Berwick, the Bank's customer, asserts he was defrauded, the Bank may not assert fraud on its customer as a defense to its unconditional obligation to pay. Further, as discussed below, Berwick's asserted claim against the Check was (1) defective, because it was false and (2) not enforceable at the time Las Vegas Sands presented the Check for payment to Bank of Colorado. Additionally, as discussed below, because Las Vegas Sands was a holder in due course, Bank of Colorado's dishonor of the Check wrongfully denied Las Vegas Sands payment. b. James Berwick's Stop Payment Request and Claim to the At-Issue Funds See COLO. REV. STAT. § 4-3-411(b).

"If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment on a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to

Compensation for expenses and loss of interest resulting from the non-payment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages."

The seminal case is *In re Lee*, 179 B.R. 149 (9th Cir. BAP 1995), aff'd, 108 F.3d 239 (9th Cir. 1997). In *Lee*, the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") determined that a cashier's check is transferred upon delivery, because the obligation to pay a cashier's check becomes fixed at that point. *In re Lee*, 179 B.R. at 161. The BAP explained that [a]lthough a purchaser cannot stop payment of the cashier's



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check, he or she could return the cashier's check or seek to have it cancelled as long as it is in his or her possession. Therefore, until delivery, the purchaser's property rights in the cashier's check are not transferred to the payee/holder.

Id. at 161–62 (citation omitted).

The BAP amplified the Lee holding in *Vasquez v. Mora (In re Mora)*, 218 B.R. 71 (9th Cir. BAP 1998). In considering whether the transfer of a cashier's check occurs when it is deposited in the mail or actually received by the payee, the BAP held that "a cashier's check is transferred for purposes of § 549(a) when it is in the physical possession or control of the intended payee." *In re Mora*, 218 B.R. at 74.

Other cases have followed the rationale of Lee and Mora. *Hopkins v. Lojek (In re Scheu)*, 356 B.R. 751, 755 (Bankr. D. Idaho 2006) ("Under the controlling case law, it is the point in time when [the] cashier's check was delivered to Defendant that is crucial to the analysis in this action."); *Abele v. Mod. Fin. Plans Servs. (In re Cohen)*, 300 F.3d 1097, 1107 (9th Cir. 2002) (holding that a transfer occurred when cashier's check was delivered to the payee).

In Lee, Mora, and these other cases, there was no dispute that a transfer to the payee ultimately occurred. In each case, the cashier's check was honored, and the payee received the funds.

## 15 U.S. Code § 1693o–1 - Remittance transfers

### (a) Disclosures required for remittance transfers

#### (1) In general

Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Bureau. Disclosures required under this section shall be in addition to any other disclosures applicable under this subchapter.

#### (2) Disclosures

Subject to rules prescribed by the Bureau, a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

- (A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure deciding—
  - (i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;
  - (ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and
  - (iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point; and
- (B) at the time at which the sender makes payment in connection with the remittance transfer—



(i) a receipt showing—

- (I) the information described in subparagraphs (A);
- (II) the promised date of delivery to the designated recipient; and
- (III) the name and either the telephone number or the address of the designated recipient, if either the telephone number or the address of the designated recipient is provided by the sender; and

(ii) a statement containing—(I) information about the rights of the sender under this section regarding the resolution of errors; and

(II) appropriate contact information for—

- (aa) the remittance transfer provider; and
- (bb) the State agency that regulates the remittance transfer provider and the Bureau, including the toll-free telephone number established under section 5493 of title 12.

(3) Requirements relating to disclosures

With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

- (A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that clearly and conspicuously describe the information required to be disclosed therein; and
- (B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

(4) Exception for disclosures of amount received

(A) In general

Subject to the rules prescribed by the Bureau, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 1813 of title 12, or an insured credit union, as defined in section 1752 of title 12, and if—

- (i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and
- (ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient.

(B) Deadline



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The application of subparagraph (A) shall terminate 5 years after July 21, 2010, unless the Bureau determines that termination of such provision would negatively affect the ability of remittance transfer providers described in subparagraph (A) to send remittances to locations in foreign countries, in which case, the Bureau may, by rule, extend the application of subparagraph (A) to not longer than 10 years after July 21, 2010.

(5) Exemption authority

The Bureau may, by rule, permit a remittance transfer provider to satisfy the requirements of—

- (A) paragraph (2)(A) orally, if the transaction is conducted entirely by telephone;
- (B) paragraph (2)(B), in the case of a transaction conducted entirely by telephone, by mailing the disclosures required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, or by including such documents in the next periodic statement, if the telephone transaction is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with the remittance transfer provider;
- (C) subparagraphs (A) and (B) of paragraph (2) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer; and
- (D) paragraph (2)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act [15 U.S.C. 7001(c)], if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

(6) Storefront and Internet notices

(A) In general

(i) Prominent posting

Subject to subparagraph (B), the Bureau may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts, as the Bureau may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged.

(ii) Onsite displays

The Bureau may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or controlled by the remittance transfer provider.

(iii) Internet notices

Subject to paragraph (3), the Bureau shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the



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Internet to provide a notice, comparable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

(iv) Rulemaking authority

In prescribing rules under this subparagraph, the Bureau may impose standards or requirements regarding the provision of the storefront and Internet notices required under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

(B) Study and analysis

Prior to proposing rules under subparagraph (A), the Bureau shall undertake appropriate studies and analyses, which shall be consistent with section 1693b(a)(2) of this title, and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

(i) to compare prices for remittance transfers; and

(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

(b) Foreign language disclosures

The disclosures required under this section shall be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office

(c) Regulations regarding transfers to certain nations

If the Bureau determines that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Bureau may prescribe rules (not later than 18 months after July 21, 2010) addressing the issue, which rules shall include standards for a remittance transfer provider to provide—

(1) a receipt that is consistent with subsections (a) and (b); and

(2) a reasonably accurate estimate of the foreign currency to be received, based on the rate provided to the sender by the remittance transfer provider at the time at which the transaction was initiated by the sender.

(d) Remittance transfer errors

(1) Error resolution

(A) In general

If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the



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designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

(B) Remedies

Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

- (i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;
- (ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;
- (iii) provide such other remedy, as determined appropriate by rule of the Bureau for the protection of senders; or
- (iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

(2) Rules

The Bureau shall establish, by rule issued not later than 18 months after July 21, 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

- (A) of the complaint of the sender;
- (B) that the sender provides the remittance transfer provider with respect to the alleged error; and
- (C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

(3) Cancellation and refund policy rules

Not later than 18 months after July 21, 2010, the Bureau shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

(e) Applicability of this subchapter

(1) In general

A remittance transfer that is not an electronic fund transfer, as defined in section 1693a of this title, shall not be subject to any of the provisions of



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sections 1693c through 1693k of this title. A remittance transfer that is an electronic fund transfer, as defined in section 1693a of this title, shall be subject to all provisions of this subchapter, except for section 1693f of this title, that are otherwise applicable to electronic fund transfers under this subchapter.

(2) Rule of construction

Nothing in this section shall be construed—

- (A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, section 1829b of title 12, or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or
- (B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this subchapter, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

(f) Acts of agents

(1) In general

A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

(2) Obligations of remittance transfer providers

The Bureau shall prescribe rules to implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Bureau under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.

(g) Definitions

As used in this section—

- (1) the term “designated recipient” means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this chapter;
- (2) the term “remittance transfer”—
  - (A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)))



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transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 1693a of this title; and

(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 1693d(a) of this title;

(3) the term “remittance transfer provider” means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

(4) the term “sender” means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.

(Pub. L. 90–321, title IX, § 919, as added and amended Pub. L. 111–203, title X, §§ 1073(a)(4), 1084(1), July 21, 2010, 124 Stat. 2060, 2081.)

## 15 U.S. Code § 1693 - Congressional findings and declaration of purpose

### (a) Rights and liabilities undefined

The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

### (b) Purposes

It is the purpose of this subchapter to provide a basic Framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90–321, title IX, § 902, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728; amended Pub. L. 111–203, title X, § 1073(a)(1), July 21, 2010, 124 Stat. 2060.)

## 15 U.S. Code § 1693o - Administrative enforcement

### (a) Enforcing agencies

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under—



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- (1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—
- (A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;
  - (B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and
  - (C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;
- (2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union;
- (3) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part;
- (4) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act and [1]
- (5) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter, except that the Bureau shall not have authority to enforce the requirements of section 1693o–2 of this title or any regulations prescribed by the Board under section 1693o–2 of this title.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

- (b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers

For the purpose of the exercise by any agency referred to in any of paragraphs (1) through (4) of subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in any of paragraphs (1) through (4) of subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

- (c) Overall enforcement authority of the Federal Trade Commission



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Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

(Pub. L. 90–321, title IX, § 918, formerly § 917, as added Pub. L. 95–630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3739; amended Pub. L. 101–73, title VII, § 744(o), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102–242, title II, § 212(f), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 104–287, § 6(h), Oct. 11, 1996, 110 Stat. 3399; renumbered § 918, Pub. L. 111–24, title IV, § 401(1), May 22, 2009, 123 Stat. 1751; Pub. L. 111–203, title X, § 1084(5), July 21, 2010, 124 Stat. 2082.)

## THE PUBLIC TRUSTS AND OTHER TRUST CAPACITIES

The Laws of Australia /15Equity/15.14 Trustees chapter 5 sets out.

### Part A - General.

1. 15.14:66[66] **Upon acceptance of his or her office, a trustee becomes subject to the duties and acquires the powers of that office.** Duties are imperative. They compel actions or prohibit a trustee from acting in a certain way. Powers, on the other hand, are facultative. They enable a trustee to act in a certain way, but leave the trustee with a discretion as to whether she or he should so act
2. 15.14:67[67] **The first duty of the trustee is to obtain and acquaint himself or herself with all documents concerning the trust and with the state of the trust property.**
3. 15.14:68[68] **The trustee must ensure that title to the trust property is vested in him or her**
  - a. The trustee's duty to preserve the trust property cannot be adequately carried out unless the property is under her or his control.
  - b. If a better title to the trust property is obtainable, the trustee is obliged to activate himself or herself concerning it.
4. 15.14:69[69] **It is the duty of the trustees to ensure that trust property is preserved and does not fall into decay from want of repair:**



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5. As a corollary, trustees may dispose of trust property of a hazardous nature:

The trustee is duty bound to preserve the corpus of the trust as well as income.

6. 15.14:83[83] **The trustees' duty to act personally is manifested in three principal ways.**

- a. First, trustees must not allow their discretion to be fettered:
- b. Secondly, trustees must act unanimously:
- c. Thirdly, trustees must not delegate their powers and duties as trustees:

7. 15.14:84[84] **The duty to act personally requires trustees not to act under dictation or commit themselves in advance as to future conduct**

8. **as trustees.** Trustees must not permit others to dictate to them the way the fiduciary discretion ought to be exercised.

### **The Law relating to Contracts, Tender of Payment and Bills of Exchange**

9. I refer to the Laws of Australia at Part F entitled Tender of Payment

- a. at 7.5.38(380 This text states that in general a tender of payment must be made in legal currency to be effective at law.
  - i. As a matter of construction, or by the implication of a term it may be possible to distil an agreement to accept "payment" in any form which would be so regarded by the commercial community. If a payment by cheque which is not considered by some as legal tender is not raised at
  - ii. the time of its receipt, then any such objection may be deemed to have been waived <sup>4</sup>
  - iii. Again, a creditor may be estopped from relying upon such a point to achieve an unconscionable advantage <sup>5</sup>
- b. 7.5.39 The principle of tender has been developed to protect a party obliged to make a payment and who is unable to do so because of lack of co-operation by the other (recipient) party.
  - i. Payment is an obligation which requires co-operation in order to enable its performance. Refusal to accept a payment prevents the obligor from fulfilling the obligation of the contract in question. A tender operates to demonstrate that the obligor is ready willing and able to meet the obligation so far as it is possible to be performed without the co-operation of the obligee
- c. At 7.5.40 A tender of payment does not constitute payment but when linked

<sup>4</sup> Stirling Properties Ltd v Yerba Pty Ltd (1987) 74 ACTR 1

<sup>5</sup> Westeq v Challenger Mining Corp LNL (1988) 13 ACLR627 and see generally Unfair Dealing 35.6 Estoppel



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to a continued readiness to make payment it may produce legal consequences of advantage to the person making the tender.

- i. Firstly, the person refusing a valid tender cannot thereafter assert that the obligor was in breach of the relevant obligation or rely upon any rights that might otherwise have arisen as a result of a breach. In such a case, payment is frustrated by the wrongful act of the obligee who will not be permitted to take advantage of the act.
  - ii. Secondly and conversely the person making the tender can assert that he or she was ready willing and able to meet the obligation.
  - iii. Thirdly if the obligor is sued for payment, then the tender constitutes a complete defence if the sum in question is paid into court or as in this case remains in the hands of the obligee <sup>6</sup> In such a case, the obligee is not entitled to interest, damages and will be ordered to pay costs of the suit. <sup>7</sup>
  - iv. If the money has been paid into court, then the plaintiff will not be permitted to take the money out of court without deduction for taxed costs.
- d. At 7.5.42 an essential requirement of a valid tender is that the payment should be proffered unconditionally.
  - e. Halsbury's Laws of Australia current in March 2004 at 45-675 where a contract between a debtor and a creditor for calls for payment in cash,
  - f. however, if tender is made by way of Negotiable Instrument or by foreign currency and a creditor makes no objection to its form, there is a waiver of the requirement of legal tender.
  - g. Legal Tender is acceptable if the contract is silent to the means of payment, custom and usage may be such as to make tender of personal cheque or other form of payment instrument a valid tender.
10. *In Conley v Federal Commissioner of Taxation 81 FGR 24, 38ATR 374* handed down on the 27/2/1998 The term money is set out that it has long been recognised as denoting more than mere Cash or Notes that are Legal Tender.
  11. Use of the expression "Any money due or accruing" in *the Income Tax Assessment Act 1936* at section 218 points to the term encompassing a debt.
  12. The intent of section 218 of the act is to empower the commissioner to seize Money.
  13. **The Bills of Exchange Act 1909 (Cth)** An Act relating to Bills of Exchange, Cheques and Promissory Notes

### Part I—Preliminary

<sup>6</sup> Australian Mid-Eastern Club Ltd v. Yassim (1989) 1 ASCR 399

<sup>7</sup> Norton v Ellam (1837) 2 M & W 461 (150ER839), Graham v, Seal (1918) 88 LJ Ch31 (CA)



#### 1 Short title [see Note 1]

This Act may be cited as the *Bills of Exchange Act 1909*.

#### 2 Commencement [see Note 1]

This Act shall commence on a day to be fixed by proclamation.

#### 4 Interpretation of terms

In this Act, unless the context otherwise requires:

**Acceptance** means an acceptance completed by delivery or notification.

**Action** includes counter-claim and set-off.

**Australasia** means Australia, and any Territory, New Zealand, and the Fiji Islands.

**Banker** includes a body of persons, whether incorporated or not, who carry on the business of banking.

**Bearer** means the person in possession of a bill or note which is payable to bearer.

**Bill** means bill of exchange.

**Delivery** means transfer of possession, actual or constructive, from one person to another.

**Holder** means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof.

**Endorsement** means an endorsement completed by delivery.

**Issue** means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.

**Note** means promissory note.

**Person** includes a body of persons whether incorporated or not.

**Value** means valuable consideration.

a. **A bill of exchange is defined in section 8 of the Bills of Exchange Act as:**

*“An unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.”*

Section 8 subsection 4 of the act states that A bill is not invalid by reason: (c) that it does not specify the place where it is drawn, or the place where it is payable.

b. **A promissory note is defined in section 89 of the Bills of Exchange Act as:**



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An unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of a specified person, or to bearer.

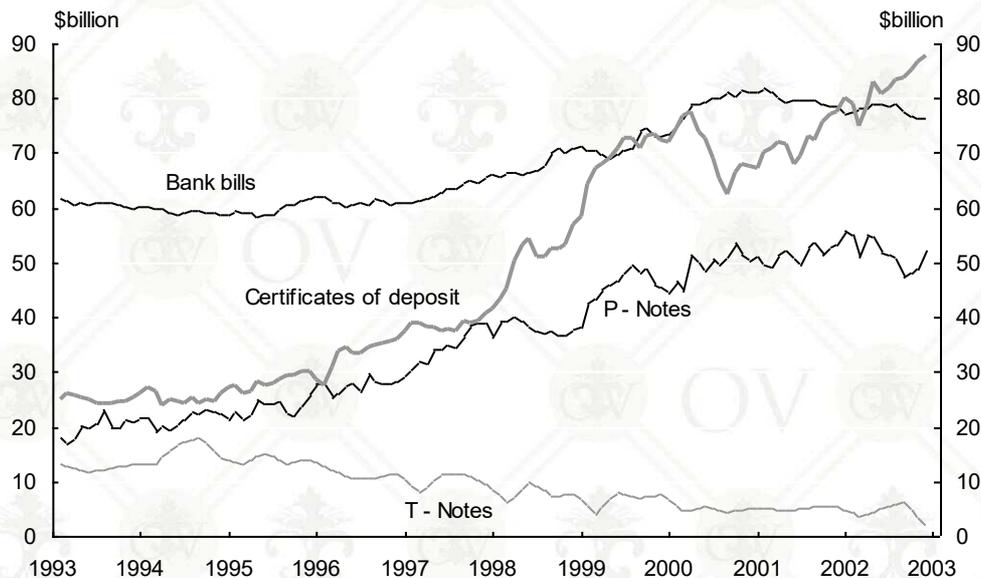
14. In the “Interpretation of Terms” of the Australian Bills of Exchange Act “Value” means “Valuable Consideration”. In effect it means that where a Bill of Exchange is issued for consideration of an asset’s value the Bill itself represents the value of that consideration (the asset behind the bill) just like the promissory notes issued in plastic as Australian Dollars (what we call
15. money) have no “real” value in themselves, they are just a piece of paper or plastic with ink – the same as a Bill of Exchange “in itself” is just a piece of paper with ink; but the real value rests in the “valuable consideration” of the assets backing the piece of paper or plastic; like the assets of the country backing the money paper or the assets behind the Bills of Exchange backing the Bills of Exchange. The difference between a \$10 dollar note and a \$100 dollar note is not the size of the paper. It is the perceived “valuable consideration” that is different.
16. The overarching purpose of the Bills of Exchange Act is to codify by statute the common law relating to two types of negotiable instrument - bills of exchange and promissory notes. The Bills of Exchange Act confirms that bills of exchange and promissory notes are negotiable instruments. The advantage enjoyed by negotiable instruments over other financial instruments is that of negotiability. Negotiability provides a good faith purchaser of a bill of exchange or promissory note guaranteed title to the financial instrument.
17. The Bills of Exchange Act applies to any person who becomes a party to a bill of exchange or promissory note.
18. The Bills of Exchange Act confirms that bills of exchange and promissory notes are negotiable instruments, a status evolved at common law. This gives these financial instruments a special advantage over other classes of contracts, as negotiability gives a good faith purchaser of a bill of exchange or a promissory note guaranteed title to the financial instrument.
19. Bills of exchange and promissory notes are financial instruments, in documentary form, characterized by negotiability. Negotiable instruments are documents of title, the possession of which may confer rights. Thus, a bill of exchange or a promissory note is a document that serves as a unique and transferable physical token of intangible rights and obligations.
20. The objectives of the Bills of Exchange Act are to:
  - a. provide uniformity of law in Australia in relation to bills of exchange and promissory notes.
  - b. provide legal certainty by confirming the nature of bills of exchange and promissory notes as negotiable instruments; and



c. promote efficiency in the marketplace which utilizes bills of exchange and promissory notes through the concept of negotiability.

21. **Mercantile Custom** in this country is well established in respect of the uses of Bills of Exchange.

### Short-term Money Market Securities Outstanding



Source: RBA<sup>8</sup>.

22. The Australian short-term money market is dominated by bank bills and CDs (collectively known as 'bank paper'). At the end of March 2003, the total value of securities outstanding in the short-term money market<sup>9</sup> was around \$A219 billion, of which bank paper outstanding totalled \$A164 billion.<sup>10</sup> Bank paper also accounts for the majority of turnover in the short-term money

23. market. For the year 2001-02, turnover in bank bills and CDs was about \$1.6 trillion. For the same period, turnover in promissory notes was \$750 billion and turnover in T-Notes was \$14 billion.<sup>11</sup>

24. Bank bills issued by the four major domestic banks are benchmarks for the short-dated debt sector. Liquidity in this paper is supported by the high credit quality of the issuing banks and by the fact that the bills of the four major banks are deliverable into the 90-day bank bill futures contract.<sup>12</sup>

<sup>8</sup> Reserve Bank of Australia, *Bulletin Statistics*, May 2003, Tables D.2, D.3 and E.7.

<sup>9</sup> Here defined as bank bills, certificates of deposit, promissory notes and Treasury Notes.

<sup>10</sup> Reserve Bank of Australia, *Bulletin Statistics*, May 2003, Tables D.2, D.3 and E.7.

<sup>11</sup> Australian Financial Markets Association & Securities Industry Research Centre of Asia-Pacific, *Australian Financial Markets Report 2002 (AFMR)*.

<sup>12</sup> Axis Australia, Executive Briefing, Section 5 – Short-Term Debt Instruments

[http://www.axiss.com.au/content/pubs/executive\\_briefings/debt\\_security/debt\\_securities-...](http://www.axiss.com.au/content/pubs/executive_briefings/debt_security/debt_securities-...) (Accessed 27 May 2002).



### **Uniformity**

- a. The Bills of Exchange Act was introduced into Parliament in 1907 with the stated intention of unifying the law on bills of exchange in Australia in one code:

*“Honorable Senators will recognize that it would be of considerable convenience to the trading community of the Commonwealth if they could find the law on this subject in one code, and could be certain that if amendments, no matter how desirable, were introduced, they would be in relation to that one particular code.”<sup>13</sup>*

- b. The Bills of Exchange Act replaced similar statutes which had previously been enacted by the various Australian colonies.<sup>14</sup>
- c. The colonial legislation was in turn based on the 1882 UK Bills of Exchange Act, the enactment of which reduced to statutory form the rules of the common law on negotiable instruments found in more than 2500 judicial decisions.<sup>15</sup>

### **Certainty**

- a. A key objective of the Bills of Exchange Act is to provide legal certainty in relation to bills of exchange and promissory notes by providing statutory confirmation of their status as negotiable instruments.
- b. There is no simple method of establishing which instruments will be held by the courts to be negotiable instruments,<sup>16</sup> as this matter is determined by considering mercantile customs and usages.
- c. If evidence is produced of a commercial custom (which is firmly established and long recognised by the mercantile community) that treats certain instruments as negotiable, the courts will treat them as having that quality, although usage over a long period is not essential.<sup>17</sup>
- d. However, the negotiable status of a particular contract may be determined by statute as well as by the courts. Whereas bills of exchange were recognised by the common law as being negotiable instruments, promissory notes are deemed

<sup>13</sup> Extract from Hansard, Senator Keating (Minister for Home Affairs), Second Reading Speech on the Bill, Australia, Senate and House of Representatives, *Parliamentary Debates*, 1907, vol XXXVI, p. 653.

<sup>14</sup> The Bills of Exchange Act was to supersede all State enactments on the subject. Between 1884 and 1890, all the Australian colonies had introduced legislation based on the 1882 UK Bills of Exchange Act. By the time the Commonwealth's Bill was introduced into the Parliament in 1907, the State-based legislation regarding bills of exchange was comprised of six principal Acts and six amending Acts.

<sup>15</sup> Brian Conrick, *MJL Rajanayagam's The Law of Negotiable Instruments in Australia*, 2nd edn, Butterworths, Sydney, 1989, p. 5.

<sup>16</sup> D Everett & S McCracken, *Banking and Financial Institutions Law*, 4th edn, LBC Information Services, Sydney, 1997, p. 194.

<sup>17</sup> See WS Weerasooria, *Banking Law and the Financial System in Australia*, 4th edn, Butterworths, Sydney, 1996, p. 161 (and the cases referred to therein).



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- e. to be negotiable instruments by the Act,<sup>18</sup> since promissory notes were held not to have enjoyed the attributes of negotiability by the usage and custom of merchants.<sup>19</sup>
- f. In addition to confirming, in statutory terms, their nature as negotiable instruments, the Bills of Exchange Act defines the features and characteristics of bills of exchange and promissory notes, and sets out the rights, obligations and liabilities of parties to bills of exchange and promissory notes. Division 6 of the Act sets out the rights, obligations and liabilities of parties to a bill of exchange, while section 95 designates the rights, obligations and liabilities of parties to a promissory note.<sup>20</sup>

### **Efficiency**

- a. The bill of exchange, as a negotiable instrument, enjoys two attractive features. It is transferable without formalities, and honest acquisition confers good title (even if the transferor did not have good title).<sup>21</sup>
- b. A bill of exchange (and the rights that it represents) is transferable in principle. That is to say, the rightful possessor of the document can transfer his or her rights to another person simply by delivering the document to that other person. A bill of exchange is capable of being transferred by delivery (in the case of an instrument requiring payment to be made to a named person or its bearer), or by the payee's endorsement and delivery (in the case of an instrument requiring payment to be made to a named person or to the order of that named person). Legal title is vested in the transferee without any further instrument and without the necessity of giving notice of the transfer to the person liable to pay.
- c. However, not all instruments that are capable of being transferred are negotiable. In fact, most do not benefit from this attribute.<sup>22</sup> One of the main reasons merchants developed the bill of exchange was to take advantage of the ‘

<sup>18</sup> In Australia, Senate and House of Representatives, *Parliamentary Debates*, 1909, vol. 1, p. 1932 on the proposed bills of exchange legislation, Mr. Glynn, the Attorney-General, noted that:

‘The negotiability, or power of transfer by mere delivery, which is possessed in the case of bank notes, was challenged in regard to promissory notes, and about 1703 the Chief Justice of the Court of the Queen’s Bench declared that they were not transferable, and that it was a piece of impudence for bankers to so regard them. However, a few years later, the Act 3 and 4 Anne (UK) made them equally negotiable with bills of exchange, and ever since they have formed part of the general commercial currency.’

<sup>19</sup> D Everett & S McCracken, *Banking and Financial Institutions Law*, 4th edn, footnote 11, p. 302, citing *Buller v Cripps* (1703) 6 Mod Rep 29, per Holt CJ.

<sup>20</sup> The Bills of Exchange Act provides for the protection of holders of bills. The liability for repayment runs from the acceptor, to the drawer, then to the indorsers (last indorser to first indorser). Thus, the first indorser can only make a claim against the drawer or the acceptor. The sole liability established by the issuance of a promissory note is borne by the issuer, since no other party accepts the note; nor is there a series of contingent liabilities established by indorsement, as is the case with bills of exchange.

<sup>21</sup> Joanna Benjamin, *The Law of Global Custody*, Butterworths, London, 1996, p. 16.

<sup>22</sup> D Everett and S McCracken, *Banking and Financial Institutions Law*, 4th edn, LBC Information Services, Sydney, 1997, p. 187.



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guaranteed title' concept of negotiability, which is not enjoyed by other contracts for the transfer of debt, such as, assignments of choses in action.<sup>23</sup> A transferee (or holder) taking a negotiable instrument such as a bill of exchange in good faith, for value and without actual notice of any defect in the transferor's title, can acquire a better title than that possessed by the transferor and is not affected by prior equities (that is, he or she acquires title free from any defect in the title of the prior holder). It is these characteristics which distinguish bills of exchange (and promissory notes) from other contracts.

- d. Under the Bills of Exchange Act, the transferee is known as a 'holder in due course',<sup>24</sup> the legal status of which has been said to promote transactions and encourage the rapid and unimpeded flow of capital.<sup>25</sup> Statutory confirmation of this status by sections 43 and 95 of the Bills of Exchange Act (in relation to bills of exchange and promissory notes respectively) enables the market to rely on the characteristic of negotiability. Arguably, it is the concept of 'guaranteed title' enjoyed by holders in due course of negotiable instruments such as bills of exchange and promissory notes which is the key to the liquidity of these instruments.
- e. Sections 36 and 37 of the Bills of Exchange Act provide for transfer by delivery, and transfer by delivery together with endorsement, respectively.
  - bills of exchange have of necessity taken the form of pieces of paper because until recently electronic contracts and electronic securities were not technologically possible; and
  - it is the nature of the contractual terms which constitute them a bill of exchange, and not the form of the contract.<sup>26</sup>
- f. In the National Competition Policy Review of the Bills of Exchange Act in July 2003,
- g. the Working Group considers that there may be several reasons for retaining the provisions in the Bills of Exchange Act relating to conventional bills of exchange.
- h. The Working Group considers that the provisions of the Bills of Exchange Act underlying the paper form of bills of exchange

<sup>23</sup> Assignments of choses in action, in contrast to negotiable instruments, are 'subject to equities. This means that the assignee (transferee) has no guarantee that his assignor has a good title to give him. For example, the assignor may have used misrepresentation against the original debtor and may have no good title to assign to the transferee.

<sup>24</sup> The holder in due course of a negotiable instrument takes it free of adverse claims from the issuer (for example, in respect of sums owed to the issuer by previous holders) or third parties (for example, previous holders claiming to be the true owner because an earlier transfer was fraudulent).

<sup>25</sup> D Frisch & HD Gabriel, 'Much ado about nothing: achieving essential negotiability in an electronic environment', *Idaho Law Review*, 1995, vol. 31, p. 758.

<sup>26</sup> Arguably, the form requirement is not an essential element of a bill of exchange or promissory note; rather it is the rights and obligations arising between the parties which constitute the bill or note as a negotiable instrument or security.



and promissory notes should be retained for use in circumstances such as those set out below.

- Trust deeds requiring paper bills of exchange and promissory notes.
- Delivery under deliverable bank accepted bill futures contracts.
- Use by import/export companies in international trade.

### **The UNCITRAL Convention on International Bills of Exchange**

- g. The Working Group understands that paper form bills of exchange are used in international trade and will continue to be used for this purpose for some time to come.
- h. This Convention is a Treaty enlivening the exclusive and original jurisdiction of the High Court of Australia under s38 of *the Judiciary Act 1903* (Cth)
- i. The UNCITRAL (United Nations Commission on International Trade Law) Secretariat has suggested that:
  - i. There is generally no statutory means in place by which commercial parties, through the exchange of electronic messages, can validly transfer legal rights in the same manner possible with paper documents.
  - ii. In the present state of legislation, negotiability cannot be divorced from the physical possession of the original paper document.

### ***Delivery and possession***

- a. The concepts of 'delivery' and 'possession' are also bound up with the documentary nature of bills of exchange and promissory notes. A bill of exchange or promissory note is a document of title, the possession of which may confer rights.
- b. The rightful possessor of the document can transfer his or her rights to another simply by delivering the document to the other person, in the case of a bearer bill, and in other cases, by delivery and endorsement of the document. In the case of bills and notes, 'delivery' means transfer of possession, actual or constructive, from one person to another. Sections 36 and 37 of the Bills of Exchange Act provide for transfer by delivery, and transfer by delivery together with endorsement, respectively.
- c. Possession of the document of title is necessary before a holder can transfer title to the instrument. It has been suggested that property is always with the holder, or the person in possession, and that for this reason, a negotiable instrument must be capable of possession. Indeed, it has been argued that if it were incapable of possession, the negotiable instrument could not confer upon its possessor (the holder) the status of a 'holder in due course'.<sup>27</sup>



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- d. The 'holder in due course' of a negotiable instrument enjoys a favoured legal position as a bona fide purchaser for value, who can take and enforce negotiable instruments free from most claims and defences.
- e. *The status of the 'holder in due course' is confirmed by section 43 of the Bills of Exchange Act, which provides for transfer of title free from previous defects.*
- f. This characteristic of a negotiable instrument, that it is transferable to give the holder a 'guaranteed title'
- g. To obtain or transfer the right or title incorporated in a negotiable instrument, it is necessary to obtain or transfer the ownership of the original document.
- h. The original document is unique because it is prima facie evidence of ownership of the right or title bound up in the negotiable instrument.
- i. Thus, a unique document capable of possession is necessary to transfer the rights and liabilities bound up in the negotiable instrument.

*Under Section 57 of the Act the holder of a Bill has duties as regards drawee or acceptor*

- j. When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.
- k. 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.
- l. 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.
- m. 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.

Pursuant to section 59 of the act the liability of payment of the Bill lies with the Acceptor and such acceptance can occur by tendering the Bill for payment across the Counter

- The acceptor of a bill, by accepting it:
- engages that he will pay it according to the tenor of his acceptance; and
- is precluded from denying to a holder in due course:
- the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; and



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- in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his endorsement; and
- in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his endorsement.

“Modern Banking Law” 3<sup>rd</sup> Edition (Ellinger, Lomnicka & Hooley) sets out at page 698 that payment of the bill is to be arranged by the acceptor, most usually this role is assumed by a Bank. The instrument is made payable at the premises of that bank set out on the face or a designated branch of it. Where a bill is drawn on a body other than a bank the drawee accepts the bill, as payable at his own bank. *Ibid*, s.19(2)(c)

*The Holder is obliged to present the Bill at the designated domicile. BEA, s45(4)(a)*

*The Banks duty to obey an order is to the customer and in its role as acceptor.*

The Bill may be made payable by the acceptor at the premises of a bank *Ibid*, s45

Banking Law in Australia, 5<sup>th</sup> Edition (Tyree) at section 4.96 sets out that the acceptor is the person who is primarily liable on the Bill. By accepting the Bill, the acceptor

Promises that he or she will pay the bill according to the tenor of his acceptance s59(a)

Is estopped from denying to a holder in due course that the front of the Bill is what it appears to be s59(b)

An acceptor may not argue that the payee has no authority to indorse, the acceptor may however challenge the authenticity of the actual endorsement.

It is for this purpose that all bills drawn by Creditnet are delivered with a certificate of authenticity.

Section 4.98 also sets out that any endorser of a bill also becomes liable and promises to pay according to its tenor at the time of endorsement sections 60(2)(a)

Consequently, he/she/it is also estopped from denying to a holder in due course the genuineness and regularity of the drawer's signature or that of previous endorsers

Bills of Exchange (issued in perpetuity) are to be treated just like currency money, which is put on the balance sheet as a cash asset.

For every transaction where a customer who **borrow**s a Bill of Exchange there must be a **Lender** of a bill of exchange. The Lender is operating in the BLACK and the borrower is operating in the RED.

In the handling of the Bills of Exchange tendered as payment by Andrew Garrett (“the Indorser”) for the liabilities of he and his wife some financial Institutions have been handling the Bills of Exchange as Bills for Collection.....in error shows an example of a Bill of Exchange that has been receipted by Bank SA and marked on the face of it as a bill for collection.

The rear of this Bill has been indorsed by the bank and signed thereby rendering the Bank as a Party to the Bill and liable in the chain in the same way as the drawer of the Bill.



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The Bill has been accepted by Bank SA and it must pay the amount due on the face of the Bill as instructed by the drawer of the Bill under the act.

The Bills have been properly presented for acceptance across the counter.

- ❖ Bills for Collection are issued in the RED as a DEBT obligation – like a promissory note,
- ❖ Bills of Exchange are issued in the BLACK as a CREDIT instrument – like currency money.

The elements required for a Bill of Exchange are clearly set out at section 508 through to 516 of Everett & McCracken's Banking and Financial Institution Law 5<sup>th</sup> Edition.

Once a bill has been presented for acceptance (section 522)

The bill needs to be accepted (section 519) A mere signature is sufficient.

Upon acceptance the acceptor who is generally a bank is bound to pay to the account of the Payee the face value of the Bill.

The acceptor becomes a holder for value at section 32(2) of the act

A prima facie presumption that value has been given operates in favor of each party who signs or receipts a bill so that a party is deemed to be prima facie holder for value under section 35(1)

The holder in due course of the Bill is set out at section 533

The liabilities of the parties are defined by Everett & McCracken at section 537 to 547.

*Section 545 summarizes the process in respect to rules that must be followed once a Notice of Dishonor has been received and must be strictly complied with as they are designed to give certainty to the transactions*

Any party failing to honor a Bill is liable for damages as set in section 551

In the Law relating to Banker and Customer in Australia at section 7.3060 it is rare for the paying bank to be liable to anyone other than its customer for any wrongful act or omission on the part of the bank in relation to a Bill or note <sup>28</sup>

Due to the contractual Nexus between the Bank and its customer the Bank is liable for any Bill presented. <sup>29</sup>

When a bank acceded to a request by a customer or a correspondent bank to present a bill or note for acceptance or a bill or note for payment then a , subject to any specific instruction or agreement to the contrary, the bank is subject to all the statutory duties that apply to a holder in such circumstances; see Art 9 of the Uniform rules for collections (International Chamber of Commerce Publication No 322). If the customer or correspondent (as the case may be) suffers loss by reason of the bank's failure to carry out these duties, then the bank will be liable to make good the loss<sup>30</sup>

<sup>28</sup> Manning and Farquarson (p256) cited Lily v Hays (1836) 5 Ad & E 548 111 ER 172 and Noble v National Discount Co (1860) 5H&N225; 157ER1167.

<sup>29</sup> Schroder v Central Bank of London (1876) 34 LT (NS) 735

<sup>30</sup> City Bank v Australian Joint Stock Bank (1870) 9SCR (NSW) 259; Bank of Van Diemen's Land v Bank of Victoria (1871) LR 3 PC; Bank of Scotland v Dominion Bank (Toronto) (1891) AC 592



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The effect of the cases is that where an initiating Bank (the “Remitting Bank”) on instructions from a customer requests a collecting bank to present a bill of note for acceptance, the initiating bank is liable for any negligence.

The language of money is set out well on the current ANZ site where a Bill of exchange on which the name of a bank appears either as acceptor the domicile bank then the bank is the acceptor, the bill ranks as a bank accepted bill; where the Bank endorses the Bill on the Bank then it raises the Bills status to a bank endorsed bill of exchange.

A Bank accepted bill is a bill of exchange that has been accepted by the bank. This means that the accepting bank is obliged to pay the face value of the bill to its customer on the maturity date.<sup>31</sup>

## 20. BANK AND CURRENCY ACT 1890 54 VIC NO 1164

### Section 3

The provisions of this Act shall extend and apply:

- a. To every company, firm or individual engaged in the ordinary business of banking by receiving deposits and issuing bills or notes payable to the bearer at sight or on demand.
- b. To every Foreign Banking Company trading in Victoria.
- c. To every company, firm or individual banker trading in Victoria engaged in the ordinary business of banking by receiving deposits and issuing in Victoria or elsewhere bills or notes payable to the bearer at sight or on demand.

## 21. CURRENCY ACT 1965 –1973

An Act relating to Currency, Coinage and Legal Tender \*(NB-Legal Tender) \*

All transactions to be in Australian Currency

9. (1) Subject to this section, every sale, every bill of exchange or promissory note, every security for money, and every other contract, agreement, deed, instrument, transaction, dealing, matter or thing relating to money, or involving the payment of, or a liability to pay, money, that is made, executed, entered into, or done, shall, unless it is made, executed, entered into or done according to the currency of some country other than Australia, be made, executed, entered into or done according to the currency of Australia provided by this Act.
10. (1) Subject to this section: -
  - (a) a reference in the law of the Commonwealth.
  - (b) a reference in a bill of exchange, promissory note, security for money, contract or agreement (whether the contract or agreement is in writing or not), deed or another instrument; and

<sup>31</sup> Commonwealth Bank Web



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(c) a reference in any other matter (not being a reference in a law other than a law of the Commonwealth), to an amount of money in the currency provided for in the repealed Acts...

22. Conrick “Laws of Negotiable instruments in Australia set out at section 2.2 that in business transactions a person takes a bill as being akin to Legal tender. This has been repeatedly emphasized by the Court of Appeal and the House of Lords

23. In a decision of the UK High Court in *Sibora SNC v SIP (Industrial Products) Ltd.* 1976 1 Lloyd’s Report page 271, Sachs - Lord Justice at page 278 – 279 said:

***“Any erosion of the certainties of the Application by our Courts of the Law Merchant relating to bills of exchange is likely to work to the detriment of this country, which depends on International Trade to a degree that needs no emphasis. For some generations one of those certainties has been that the bona fide holder for the value of a bill of exchange is entitled, save in truly exceptional circumstances, on its maturity to have it treated as cash”.***

24. Stephenson L J (at page 278 of Lloyds report) in the same Judgement said:

***“Bills of exchange are treated as cash.....”***

25. Bill of exchange is legal tender and is representative of a contract.

*“every bill of exchange or promissory note, every security for money, and every other contract, agreement, deed, instrument, transaction, dealing, matter or thing relating to money, or involving the payment of, or a liability to pay, money,”*

can be an asset and justifiable has value for “valuable consideration”.

26. Effectively the contract is an asset of value and therefore is “valuable Consideration”

27. In Halsbury’s Laws of England vol 9 para 524 an argument was put that tender by cheque was not payment by Legal Tender however the distinction here is clear that a Bill of Exchange is Legal Tender.

28. It was also noted that if the creditor makes no objection to form but refuses to accept the cheque or bill on any other ground that a larger sum was due or any other ground, he will be considered to have waived the objection to tender.<sup>32</sup>

29. The effect of this is to ensure that once a discharge of a debt has been tendered to the creditor, he cannot later change his mind.

30. In effect the creditor is estopped from complaining that the Bill is not Legal Tender <sup>33</sup>

31. The importance of the definition is that a foreign Bill appearing on the face of it to be such MUST be protested for non-acceptance and for non-payment at section 56(2) of the act and ass to the balance if it has been accepted as to part.

<sup>32</sup> See *Daly v Egan* (1886) 12 V.L.R. 81 and *George v Cluning* (1979), 28 A.L.R. 57

<sup>33</sup> *Paynter v Willems* (1983) 2 VF 377



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32. In Atkins Encyclopedia of Court Forms in Civil proceedings 2<sup>nd</sup> Edition Volume 6(1) at page 271 para 239 it states

- a. “ A cheque is the equivalent of cash , so in an action on a bill of exchange a cross claim for unliquidated damages cannot amount to a defense of set off even if it was based on the transaction was given “ <sup>34</sup>
- b. Every holder of an instrument, except the payee is prima Facie deemed to be a holder in due course. <sup>35</sup>
- c. Where value has at any time been given the holder is deemed to be a holder for value as regards the acceptors and all parties prior to the giving of value <sup>36</sup>
- d. The burden of proof, if absence of consideration is relied upon, lies upon the defendant and this must be specifically pleaded.
- e. The defense is available between immediate parties and between remote parties where the Bill has been transferred intermittently without consideration. <sup>37</sup>
- f. Once a Bill is admitted or proved that the acceptance, issue or subsequent negotiation of the Bill or note is affected with fraud duress or illegality, the burden of proof is shifted to the claimant (That is the Holder) unless and until he proves that, subsequent to the fraud or illegality, value in good faith has been given <sup>38</sup>
- g. Where Fraud is alleged, it must be distinctly alleged and distinctly proved <sup>39</sup>
- h. When the burden of proof has shifted the holder must prove that value has been given in good faith with notice<sup>40</sup>
- i. The only defenses to an action on a bill which is accepted as genuine are that it has been obtained by Fraud or illegality or where there has been a total failure of consideration.
- j. Summary judgement without a stay of execution may be otherwise obtained by the drawee of a dishonored bill and if it can be supported by the evidence of contemporary documents, the claimant will have discharged the onus of proof and be entitled to judgement.<sup>41</sup>

<sup>34</sup> *Nova (jersey)Knit Ltd v Kammagarn Spinnerrei GmbH (1977) 2 All ER 463 1 WLR*

<sup>35</sup> Bills of Exchange Act (1882) s30

<sup>36</sup> Bills of Exchange act (1882); section 27; *Diamond v Graham (1968) 1 WLR 1061, CA*

<sup>37</sup> *Halsbury's laws (4th edition 2002 edition) Bills of Exchange and other Negotiable instruments*

<sup>38</sup> Bills of Exchange Act (1882) s 30.

<sup>39</sup> see *Arab Bank Ltd v Ross (1952) 2 QB216 (1952) 1 All ER 709*

<sup>40</sup> *Tatum v Haslar (1889) 23 QBD 345*

<sup>41</sup> *Nova (jersey)Knit Ltd v Kammagarn Spinnerrei GmbH (1977) 2 All ER 463 1 WLR, Montecchi v Shimco (UK) Ltd (1979) 1 WLR 1180*



- k. The standard of Proof when Fraud is alleged is the civil standard of proof (the balance of probability) but the court will require stronger evidence to discharge that balance when the allegation is fraud in cases where the issue does not involve moral blameworthiness <sup>42</sup>

## DUTIES OF BANKS IN RELATION TO BILLS

33. Banks come into frequent contact with Bills of Exchange and promissory notes. As paying banks they have functions to perform in relations to bills accepted payable, and notes made payable at a bank.

### The Paying Bank

34. 7.3020 Duty to pay domiciled acceptances

- a. where a customer accepts a bill and makes it payable (“domiciles it”) at the customers bank, this authorize the bank to pay on due presentation, even if there are insufficient funds to meet the drawing.<sup>43</sup>
- b. The wrongful dishonor of a bill payable at a bank would give rise to a liability to pay damages in the same as the wrongful dishonor of a cheque.<sup>44</sup>

## NOTICE OF PROTEST OF DISHONOR DATED 27th OCTOBER 2025

The Payments are drawn on a Cash Account held with the Reserve Bank of Australia (Liquidator and Managing Controller Appointed) and is Accepted by that Bank pursuant to the Power of Attorney granted to the Issuer by me in my capacity as Liquidator and Managing Controller appointed to that Bank and also in my capacity as retainer of seized collateral.

In the normal course of business you failed to comply with your duty as Holder of the Bill in Due Course

You have dishonored by non-payment in breach of the duties of the Paying Bank and a Notice has been received by me under s53(b) from the account holder; This is Communique is amongst other things a Notice of Protest of Dishonour by Non Payment under s56(2)

You have created doubt as to the applicable law in the hands our client and in so doing have defamed us in which regard this communique is a Notice of Imputations of Concern and I demand remedy under the Uniform Defamation Law, unsurprisingly there is no doubt in the minds of International Securities Houses to bona fides or stored value of Financial Instruments drawn by us.

This Communique is also an order in the nature of Mandamus that you comply

<sup>42</sup> Lek v Mathews (1927) 29 L1 L Rep 141, HL; Hornal v Neuberger Products Ltd (1957) 1 QB 247, (1956) 3 All ER 970, CA.

<sup>43</sup> In Kymer v Laurie (1849) 18 LCB218 it

<sup>44</sup> Troedel v Colonial Bank of Australasia (1870) 1 AJR 99



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With your duty to present the cashier's checks for payment on the maturity date to the Acceptor/Drawee AND Pay the Penalty as determined above

## NOTICE OF DEMAND FOR PAYMENT AND NOTICE OF:

1. CRYSTALLISATION OF REGISTERED PERSONAL PROPERTY SECURITY INTERESTS
2. SEIZURE OF COLLATERAL
3. RETENTION OF COLLATERAL
4. APPOINTMENT OF MANAGING CONTROLLER

**Whereas**, the word "Enactment" has the same meaning as the *Administrative Appeals Tribunal Act 1975 (Au)*, the *Acts Interpretation Act 1901 (Au)*, the *Commonwealth of Australia Constitution Act 1900 (Uk)* and the unwritten Constitution of the British Empire,

**And whereas**, by conspiracy between the Chargors: Grantors as Licensees funded by the State of New York and the Federation of the United States of America against the rights of the Grantee: Chargee

*18 U.S. Code § 241 - Conspiracy against rights*

*If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or*

*If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—*

*They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include*

*kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.*

*(June 25, 1948, ch. 645, 62 Stat. 696; Pub. L. 90-284, title I, § 103(a), Apr. 11, 1968, 82 Stat. 75; Pub. L. 100-690, title VII, § 7018(a), (b)(1), Nov. 18, 1988, 102 Stat. 4396; Pub. L. 103-322, title VI, § 60006(a), title XXXII, §§ 320103(a), 320201(a), title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 1970, 2109, 2113, 2147; Pub. L. 104-294, title VI, §§ 604(b)(14)(A), 607(a), Oct. 11, 1996, 110 Stat. 3507, 3511.)*

**And whereas**, the provisions of:

1. The *Cross Border Insolvency Act 2008 (Au)* enacted into Australian Domestic Law of the provisions of the Cross Border Insolvency Model Law, and



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2. The *Personal Property Security Act 2009* (Au) as the Australian interpretation of the provisions of the Cross Border Insolvency Model Law relating to securitization sets out:

### **123 Secured party may seize collateral**

- (1) A secured party may seize collateral, by any method permitted by law, if the debtor is in default under the security agreement.

Note: For seizure of accessions, see sections 95 to 97.

#### *Seizing intangible property*

- (2) For the purposes of this Act, unless subsection (3) applies, a secured party may seize intangible property only by giving a notice, stating that the giving of the notice constitutes seizure of the property, to the following persons:
- (a) the grantor;
  - (b) if the intangible property is a licence—either:
    - (i) the licensor; or
    - (ii) the licensor's successor.
- (3) Intangible property may be seized by another method, if so agreed between:
- (a) the parties to the security agreement; or
  - (b) if the intangible property is a licence—the parties to the security agreement together with the licensor or the licensor's successor.

#### *No perfection by seizure*

- (4) A secured party who seizes collateral under this section does not perfect the secured party's security interest in the collateral.

### **124 Secured party who has perfected a security interest in collateral by possession or control**

- (1) This section applies if:
- (a) a secured party has perfected a security interest in collateral by possession or control of the collateral; and
  - (b) the debtor is in default under the security agreement.
- (2) A secured party may seize the collateral under section 123 by giving a notice to:
- (a) the grantor; and
  - (b) if the collateral is a licence—either:
    - (i) the licensor; or
    - (ii) the licensor's successor.
- (3) To avoid doubt, this section applies whether the secured party has perfected the security interest only by possession or control, or by another method as well.

### **125 Obligation to dispose of or retain collateral**

- (1) A secured party who seizes collateral under section 123 must:
- (a) dispose of the collateral in accordance with Division 3; or
  - (b) take action to retain the collateral in accordance with Division 4.



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- (2) Before disposing of or taking action to retain the collateral, the secured party is, subject to the security agreement that covers the collateral, entitled to a reasonable period in which:
  - (a) to secure, store and value the collateral; and
  - (b) to determine how to deal with the collateral.
- (3) The secured party may delay disposing of, or taking action to retain, the whole or part of the collateral beyond the reasonable period mentioned in subsection (2). However, the delay must:
  - (a) if the security agreement providing for the security interest allows for the delay—be in accordance with the security agreement; or
  - (b) otherwise—be reasonable in the circumstances.

### 126 Apparent possession of collateral

- (1) If:
  - (a) collateral cannot be readily moved from a grantor's premises; or
  - (b) adequate storage facilities are not readily available for collateral; a secured party may seize the collateral under section 123 by taking apparent possession of the collateral.

Note: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

- (2) A secured party who takes apparent possession of collateral may dispose of the collateral under section 128 on the grantor's premises. However, the secured party must not cause the grantor any greater cost or inconvenience than is necessarily incidental to the disposal.
- (3) To avoid doubt, a secured party who takes apparent possession of collateral in accordance with this section does not perfect the secured party's security interest in the collateral. Division 3—Disposing of collateral (including by purchasing collateral)

### 128 Secured party may dispose of collateral

- (1) A secured party may dispose of collateral if the secured party has seized the collateral in the exercise of a right to seize the collateral on default by the debtor (whether under section 123 or otherwise).

Note 1: A secured party may dispose of collateral by purchasing the collateral (see section 129).

Note 2: The person who takes the collateral as a result of the disposal does so free of certain security interests (see section 133).

Note 3: The secured party may act as agent for the grantor in transferring title (see section 141).

#### *Method of disposal*

- (2) A secured party may dispose of collateral under this section:
  - (a) by private or public sale (including auction or closed tender); or
  - (b) by lease, if the security agreement so provides; or
  - (c) if the collateral is intellectual property—by licence.

Note 1: A different rule applies in relation to disposal by purchase (see subsection 129(3)).

Note 2: Paragraph (2)(b) does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

- (3) For the purposes of this Act, if collateral is disposed of by lease or licence, the disposal occurs at the time the lease or licence is entered into.



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- (4) The power to dispose of collateral by a lease or licence must be exercised in accordance with the terms and conditions of the security agreement.
- (5) A secured party may, under subsection (1), dispose of the whole or part of the collateral.

Note: The secured party must apply any proceeds etc. of a disposal under this section in accordance with section 140.

#### *Disposal of licences*

- (6) The power to dispose of a licence must be exercised subject to:
  - (a) the terms and conditions of the licence; and
  - (b) any applicable law of the Commonwealth, a State or a Territory.

### **129 Disposal by purchase**

- (1) A secured party may, under subsection 128(1), dispose of collateral by purchasing the collateral.

Note: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

- (2) However, the secured party may dispose of the collateral by purchasing it only if:
  - (a) the secured party gives a notice under section 130 stating that the secured party proposes to purchase the collateral; and
  - (b) no notice of objection is given to the secured party in accordance with subsection 137(2).
- (3) Despite subsection 128(2) and section 131, a secured party may purchase collateral only:
  - (a) by public sale (including auction or closed tender); and
  - (b) by paying at least the market value at the time of the purchase.

Note: Section 296 deals with the onus of proving matters under this subsection.

### **130 Notice of disposal of collateral**

- (1) Unless subsection (5) of this section or section 144 applies, a secured party who proposes to dispose of collateral on default by the debtor (whether or not under section 128) must give a notice, in accordance with this section, to:
  - (a) the grantor; and
  - (b) any other secured party with a security interest in the collateral that has a higher priority.
- (2) A notice must:
  - (a) contain the name of the secured party giving the notice; and
  - (b) contain a description of the collateral; and
  - (c) state that the secured party proposes to dispose of the collateral, unless an obligation is performed, or an amount is paid, to satisfy the obligation secured by the security interest in the collateral, on or before the day specified in accordance with subsection (3); and
  - (d) state that the notice is given for the purposes of this Act; and
  - (e) if the secured party is proposing to dispose of the collateral by purchase:
    - (i) contain details of rights of objection under Division 5; and
    - (ii) contain the address to which a notice of objection may be given under section 137; and
  - (f) contain any other matter required by the regulations for the purposes of this subsection.



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Note: The period under paragraph (c) may be extended by a court under section 293.

- (3) For the purposes of paragraph (2)(c), the day specified in a notice given to a person:
  - (a) must be at least 10 business days after the day the notice is given: or
  - (b) if the person has given a written notice to the secured party specifying a shorter period to apply for the purposes of this section—before the end of that period.
- (4) The notice may be given in the approved form.

*When notice is not required*

- (5) The secured party is not required to give a notice to any person under subsection (1) if:
  - (a) the secured party believes on reasonable grounds that the secured party was induced to enter into the relevant security agreement by fraud on the part of the debtor or the grantor; or
  - (b) the secured party believes on reasonable grounds that the collateral might perish before the end of 10 business days after the day the collateral is seized; or
  - (c) the secured party believes on reasonable grounds that there will be a material decline in the value of the collateral if it is not disposed of immediately after the day the collateral is seized; or
  - (d) the secured party believes on reasonable grounds that the expense of preserving the collateral is disproportionately large in relation to its value; or
  - (e) the collateral is foreign currency; or
  - (f) the collateral is to be disposed of in accordance with the operating rules of a clearing and settlement facility.

### **131 Duty of secured party disposing of collateral to obtain market value**

A secured party who disposes of collateral under section 128 (other than by purchasing the collateral) owes a duty, to any other person with a security interest in the collateral, and to the grantor, immediately before the disposal, to exercise all reasonable care:

- (a) if the collateral has a market value at the time of disposal—to obtain at least that market value; or
- (b) otherwise—to obtain the best price that is reasonably obtainable at the time of disposal, having regard to the circumstances existing at that time.

Note: A different rule applies in relation to disposal by purchase (see subsection 129(3)).

### **132 Secured party to give statement of account**

*Statement of account following disposal*

- (1) Unless section 144 applies, a secured party must, on request by any other person with a security interest in the collateral, or the grantor, give the person (or grantor) a written statement of account, if the first-mentioned secured party disposes of collateral under section 128 (including by purchasing the collateral in accordance with section 129).
- (2) A statement of account under subsection (1) must be given to a person before the end of:
  - (a) the period of 20 business days after the day the person requests the statement; or
  - (b) such further period as is reasonable in the circumstances.

Note: The period may also be extended by a court under section 293.

- (4) A statement of account under subsection (1) must show:



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- (a) in the case of a disposal by a lease or licence—the total amount received, and expected to be received, during the period:
  - (i) starting when the secured party seized the collateral; and
  - (ii) ending at the end of the lease or licence; and
- (b) in any other case—the total amount received from the disposal of the collateral (or in the case of disposal by purchase, paid by the secured party) during the period:
  - (i) starting when the secured party seized the collateral; and
  - (ii) ending at the time of the disposal of the collateral; and
- (c) in any case—the amount of expenses relating to the disposal; and
- (d) any amounts paid to other secured parties; and
- (e) the balance owing by the secured party to the grantor, or by the debtor to the secured party, as the case may be.

*Statement of account if no disposal*

- (4) A secured party who has not disposed of collateral before the end of 6 months after the day the collateral is seized must, in accordance with subsections (5) and (6), give a written statement of account for each period of 6 months after seizing the collateral, until the collateral is disposed of.
- (5) The statement of account for a 6 month period must be given to any other person with a security interest in the collateral, or the grantor, if the other person (or the grantor) requests the statement for that period.
- (6) A statement of account under subsection (4) must be given to a person before the end of:
  - (a) the period of 20 business days after the day the person requests the statement; or
  - (b) such further period as is reasonable in the circumstances.

Note: The period may also be extended by a court under section 293.
- (7) A statement of account under subsection (4) must:
  - (a) state that the secured party has not disposed of the collateral; and
  - (b) show the total amount received in relation to the collateral during the period:
    - (i) starting when the secured party seized the collateral; and
    - (ii) ending at the time the statement is given; and
  - (c) show the amount of expenses relating to the retention of the collateral before the disposal.

### 133 Disposing of collateral free of interests

- (1) If collateral has been disposed of under section 128 (including by a secured party purchasing the collateral), a person takes the collateral as a result of the disposal free of all of the following interests in the collateral:
  - (a) the interest of the grantor;
  - (b) the security interest of the secured party who disposed of the collateral;
  - (c) all security interests in the collateral that have a lower priority than the security interest of that secured party.

Note: If a person has a perfected security interest in the collateral that ranks higher than that of the secured party, the person retains a security interest in the collateral.

- (2) Subsection (1) applies in relation to a disposal of collateral (other than a disposal by a secured party purchasing the collateral) even if the requirements of this Chapter have not been complied with.



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### 134 Proposal of secured party to retain collateral

- (1) A secured party may retain collateral if the secured party has seized the collateral in the exercise of a right to seize the collateral on default by the debtor (whether under section 123 or otherwise).

Note 1: This section does not apply in relation to collateral that is used predominantly for personal, domestic or household purposes (see subsection 109(5)).

Note 2: The secured party may act as agent for the grantor in transferring title (see section 141).

- (2) However, the secured party may retain the collateral only if:
- the secured party gives a notice under section 135 to retain the collateral; and
  - no notice of objection is given to the secured party in accordance with subsection 137(2).

### 135 Notice of retention of collateral

- (1) A secured party (the *retaining party*) who proposes to retain collateral under section 134 must (unless section 144 applies) give a notice of the proposal, in accordance with this section, to:

- the grantor; and
- if the security interest of the retaining party is not a purchase money security interest—a secured party who, at the time the retaining party gives the notice, has a registration that describes the collateral; and
- if the security interest of the retaining party is a purchase money security interest—a secured party over whom (or which) the retaining party has priority under section 62 or 63, but only if, at the time the retaining party gives the notice, the secured party has a registration that describes the collateral.

- (2) The secured party must give a notice to a person:

- at least 10 business days before the day the first steps are taken to retain the collateral; or
- if the person has given a written notice to the secured party specifying a shorter period to apply for the purposes of this section—before the end of that period.

Note: The period mentioned in paragraph (a) may be extended by a court under section 293.

- (3) A notice must:

- contain the name of the secured party giving the notice; and
- contain a description of the collateral; and
- state that the secured party proposes to retain the collateral, unless an obligation is performed, or an amount is paid, as mentioned in paragraph (d), on or before a specified day (being a day that is at least 10 business days after the day the notice is given); and
- state the obligation to be performed, or the amount of the payment required, before the day specified in accordance with paragraph (c), to satisfy the obligation secured by the security interest in the collateral; and
- contain details of rights of objection under Division 5; and
- contain the address to which a notice of objection may be given under section 137; and
- contain any other matter required by the regulations for the purposes of this subsection.

- (4) The notice must be given in the approved form.

### 136 Retaining collateral free of interests

*Retaining collateral free of interests if notices have been given in accordance with section 135*

- (1) If:



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- (a) a secured party gives one or more notices in accordance with section 135 to retain collateral; and
  - (b) no notice of objection is given to the secured party in accordance with subsection 137(2); then, at the end of the day specified in accordance with paragraph 135(3)(c), the secured party is entitled to take steps to have title to the collateral pass to the secured party.
- (2) At the time the title to the collateral passes to the secured party, the secured party takes the collateral free of all of the following interests in the collateral:
- (a) the interest of the grantor;
  - (b) the security interest of the secured party to whom title passes;
  - (c) all security interests that have a lower priority than the security interest of that secured party.

*Acquiring collateral that has been retained free of interests if notices have not been given in accordance with section 135*

- (3) A person takes collateral free of the interests referred to in subsection (2) if:
- (a) a secured party is required to give one or more notices in relation to the collateral in accordance with section 135; and
  - (b) the secured party has not done so; and
  - (c) the person acquires the collateral from the secured party for new value; and
  - (d) the person has no actual knowledge that the requirements of section 135 have not been complied with.
- (4) Subsection (3) applies in relation to a security interest referred to in paragraph (2)(c) whether or not a registration with respect to the security interest is effective.

*Extinguishment of obligation owed to the secured party*

- (5) If a secured party (the **retaining secured party**) takes collateral under this section free of the interests referred to in subsection (2):
- (a) the debt or other obligation secured by the security interest held by the retaining secured party is extinguished; but
  - (b) paragraph (2)(c) does not have the effect that a debt or other obligation secured by another security interest in the collateral is extinguished, if the other security interest has a lower priority than the security interest of the retaining secured party.

**And whereas,** The Implied/ Common Law Performance Securities by default set out:

### 3.7 Events of default

Each of the following is an event of default (whether caused by anything outside the control of the chargor):

- (1) **MONETARY DEFAULT** The chargor fails to pay when due an amount payable by it under this document or under any other transaction document, and such default continues for 60 days.
- (2) **OTHER OBLIGATIONS** The chargor fails to comply with any of its other obligations under this document and, if in the opinion of the chargee that failure can



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be remedied within 60 days, the chargor does not remedy the failure within 60 days after the chargee gives notice to the chargor requiring that failure to be remedied; and the chargor does not during that period take all action which in the chargee's opinion is necessary or desirable to quickly remedy that default.

- (3) **MISREPRESENTATION** A representation, warranty, or statement by or on behalf of the chargor in this document, or in a document provided under or in connection with this document, is not true or is incorrect in a material respect or is misleading in a material respect when made or repeated.
- (4) **CROSS DEFAULT** The chargor fails to pay any financial indebtedness of the chargor aggregating to at least \$50,000.00 (or its equivalent in another currency). For the purpose of this sub-cl (4), if a person is required to provide cash cover for financial indebtedness as a result of an actual, likely, or threatened default or an event of default or termination, cancellation, special prepayment or similar event, whatever called, that financial indebtedness will be taken to be due and payable.
- (5) **INSOLVENCY EVENT** Any one or more of the following events occurs in relation to the chargor:
- (a) an application (not being an application withdrawn or dismissed within 90 days of the making of the application) is made to a court for an order, or an order is made, that it be wound up or that a liquidator or provisional liquidator be appointed.
  - (b) except to reconstruct or amalgamate while solvent with the prior written consent of the chargee, it enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
  - (c) it resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent upon terms approved in writing by the chargee, or it is otherwise wound up or
  - (d) it is unable to pay its debts as they fall due or is or it states that it is insolvent, or it is deemed or presumed insolvent under any applicable legislation.
  - (e) a receiver, receiver and manager, trustee, administrator, or similar official is appointed to the chargor or over any or all of its assets or undertaking.
  - (f) it takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation.
  - (g) a liquidation occurs; or
  - (h) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.



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- (6) **ENFORCEMENT AGAINST ASSETS** A security interest becomes enforceable or is enforced, or a distress, attachment or other execution is levied or enforced over, all or any of the assets and undertaking of the chargor.
- (7) **CESSATION OF BUSINESS** The chargor ceases or threatens to cease to carry on its business or a substantial part of its business.
- (8) **REDUCTION OF CAPITAL** Without the prior consent of the chargee, the chargor reduces its capital (including, without limitation, a buyback of its shares but excluding a redemption of redeemable shares) or effects a resolution referred to in s 254N(1) of the Corporations Act 2001.
- (9) **VITIATION**
- (a) All or any part of this document becomes void, illegal, invalid, unenforceable or of limited force and effect or is claimed to be so by the chargor.
  - (b) The security interest created by this document ceases to have the priority which it purports to have under this document or ceases to secure the payment of the moneys or the performance of the obligations which it purports to secure, other than by any act of the chargee.
- (10) **AMENDMENT OF CONSTITUTION** The constitution of the chargor is amended in a material respect without the prior consent of the chargee (which must not be withheld unreasonably).
- (11) **REVOCATION OF AUTHORISATION** An authorisation which is material to the performance by the chargor of this document or to the ongoing operation of its business in the ordinary course, is repealed, revoked, terminated, or expires, or is modified or has conditions attached in a manner which has in the chargee's opinion a material adverse effect; and is not immediately replaced by another authorisation acceptable to the chargee.
- (12) **MATERIAL ADVERSE CHANGE** Any other event or series of events, whether related or not, occurs which has in the chargee's opinion a material adverse effect.
- (13) **COMPULSORY ACQUISITION**
- (a) All or any substantial or material part of the secured property is compulsorily acquired by or by order of a government agency or under law.
  - (b) a government agency orders the sale, vesting or divesting of all or any substantial or material part of the secured property; or
  - (c) a government agency takes a step for the purpose of any of the foregoing or proposes or threatens to do any of the foregoing and the chargor fails to take or diligently to pursue steps necessary or reasonably requested by the chargee for the purpose of preventing the occurrence of any of the foregoing.



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- (14) **GOVERNMENTAL INTERFERENCE** A law or anything done by a government agency wholly or partially to a material extent renders illegal, prevents, or restricts the performance or effectiveness of this document or otherwise has a material adverse effect.
- (15) **TRANSACTION DOCUMENTS** Any event of default (as that expression, or any equivalent expression, is defined in any transaction document) occurs.

### 3.8 Crystallisation

#### 3.8.1 By notice

The chargee may serve a written notice upon the chargor after an event of default has occurred stating that the floating charge is to convert into a fixed charge and describing the property affected by the notice, whereupon the floating charge will convert into a fixed charge in respect of the property described in that notice.

#### 3.8.2 Automatic

The floating charge shall automatically convert into a fixed charge over:

- (1) all of the secured property not already subject to a fixed charge under this document if:
  - (a) any notice is given by the chargee under cl 11.1(1) or if the chargee takes any steps in enforcement of the security granted by this document.
  - (b) the chargor ceases or threatens to cease to carry on business or a substantial part of its business except as permitted under a transaction document; or
  - (c) an order is made, or a resolution is passed for the winding up of the chargor.
- (2) any proceeds of any book debts or other debt, upon any creditor of the chargor taking any legal action or other proceedings to have those proceeds paid to the creditor pursuant to any statute or other law.
- (3) an asset which is secured property not already subject to a fixed charge under this document if any of the following occurs in relation to that asset:
  - (a) the chargor deals or attempts to deal with that asset other than in accordance with, or as permitted by, this document.
  - (b) a person takes any action to obtain or obtains any writ, order, notice, or other thing relating to any distress, attachment, or other execution against that asset.
  - (d) any person takes any action to exercise any right in respect of a security interest held by that person over that asset.



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(d) upon the appointment by any person of an administrator, receiver or receiver and manager over that asset; and

(e) any action is taken to issue to any person a notice under s 218 or s 255 of the Income Tax Assessment Act 1936 (Cth); s 74 of the Sales Tax Assessment Act 1992 (Cth); or a notice under any similar legislation.

### 3.9 Default Powers

#### 3.9.1 Powers on default

The chargee may at any time after an event of default has occurred exercise any or all of the rights set out in this cl 11 in any manner and at any time and notwithstanding that a receiver has been appointed:

##### (1) Acceleration

The chargee may at any time by notice to the chargor declare that:

- (a) the secured money, which is then owing or payable, is immediately due for payment; and
- (b) an amount equal to that part of the secured money, which is contingently owing or payable, is immediately due for payment and those moneys will immediately become payable by the chargor.

##### (2) Statutory and implied powers

The chargee may exercise all rights conferred by the laws of any relevant jurisdiction upon mortgagees or chargees.

##### (3) Sale

The chargee may sell or otherwise dispose of any of the secured property and, without limitation, any sale or disposal may be:

- (a) by private treaty, auction, tender or otherwise.
- (b) for cash or with the deferral of the whole or part of the purchase price (with or without interest or security).
- (c) in one lot or in separate parcels.
- (e) in conjunction with the sale or disposal in relation to any other property by any other person, with full power to apportion costs, expenses, purchase money, rent, fees and other proceeds; and



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(e) upon terms and conditions that the chargee determines, whether or not the chargee has taken possession.

(4) General powers

The chargee may:

- (a) enter, take possession of, take control of, and get in the secured property.
- (b) receive rents and profits derived from the secured property.
- (c) carry on any business or activity of the chargor.
- (d) manage, develop, use, exploit, quietly enjoy and otherwise deal with the secured property.
- (e) exercise the rights and remedies of the chargor and comply with its obligations in respect of the secured property and cause and permit any other person to comply with their obligations in respect of the secured property.
- (f) vary, replace, or release any right or interest of the chargor in or in relation to the secured property.
- (g) carry out or complete, in any form, the construction of any works.
- (h) lease, license or hire out the secured property.
- (i) surrender or accept the surrender of the secured property.
- (j) exchange any part of the secured property for any other property and, if there is a difference in value between the property exchanged, give, or receive, as the case may be, any moneys or other consideration equal to the difference in value in order to give or receive equal value for the exchange.
- (k) acquire or grant easements, profits a prendre, covenants or other rights which benefit, burden, or relate to the secured property and dedicate for any public purpose any part of the secured property.
- (l) subdivide or consolidate any land forming part of the secured property.
- (m) grant options and rights of first refusal to acquire the secured property.
- (n) insure, maintain, improve, and protect the secured property.
- (o) sever trees, improvements, or fixtures from the balance of the secured property and deal with them separately from the balance of the secured property.



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- (p) take on lease or on hire or otherwise acquire any property necessary or convenient in relation to the carrying on of a business or activity of the chargor.
- (q) use the property and services of the chargor and the services of its personnel in the exercise of any rights under this document.
- (r) carry out, vary, replace, rescind, repudiate, enforce, or terminate any agreement to which the chargor is a party and which relates to the secured property.
- (s) give any guarantee and indemnity or either of them for the protection or enhancement of the secured property; and
- (t) operate any bank account which forms part of the secured property and open and operate any further bank accounts.
- (u) promote or cause the formation of companies including for the purpose of entering contracts for the transfer to or acquisition by those companies of any of the secured property or so that the companies assume the obligations of the chargor, or both.
- (v) sell or assign any secured property to a person where that person assumes obligations of the chargor.
- (w) exercise any voting or other rights or powers in respect of any secured property and do anything in relation to Marketable Securities; and
- (x) surrender, make, enforce, compromise, or settle any claim under or in connection with any insurances.

#### (5) Share capital

The chargee may:

- (a) in the name of the chargor make a call-in respect of money unpaid on Shares in the chargor; and
- (b) enforce payment of any call that is due for payment and unpaid, whether the calls are made by the chargee or otherwise.

#### (6) Liquidation

The chargee may where a debt or other monetary obligation is owed (whether actually or contingently) to the chargor, prove the debt or obligation in a liquidation, receive dividends and assent to any proposal for an arrangement (including a scheme of arrangement), composition or a compromise with, or an assignment for the benefit of, creditors.

#### (7) Raise and lend money



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The chargee may upon any terms and conditions that the chargee thinks fit:

- (a) (i) borrow or otherwise raise moneys or obtain financial accommodation on the security of the secured property; and
- (ii) lend or otherwise grant financial accommodation to a receiver or an attorney on the security of the secured property, including, without limitation, any moneys required in relation to the exercise of any right by the chargee or a receiver or an attorney; and
- (f) deal with any security interest granted by it over the secured property and enter into any agreement relating to the priority of that security interest and discharge it.

**(8) Investment of moneys**

Any moneys received by the chargee which are not required to be immediately applied in the exercise of any right or pursuant to cl 14 may be invested in any way authorised by the laws of any relevant jurisdiction for the investment of trust moneys and the chargee may vary or dispose of the investment.

**(9) Miscellaneous powers**

The chargee may:

- (a) on behalf of the chargor, draw, accept, make, or endorse any bill of exchange or promissory note.
- (b) affix and countersign any seal of the chargor for the purpose of exercising any of its rights under this document.
- (c) employ or engage any person (including professional advisors or consultants) for the purpose of exercising any of the chargee's rights and (d) on behalf of the chargor, commence, defend, prosecute, settle, discontinue, and compromise litigation, administrative or arbitral proceedings in relation to the secured property.
- (e) on behalf of the chargor, enter and execute and deliver any documents and agreements for the purposes of this document.
- (f) on behalf of the chargor, give receipts and release, discharge or compromise any debt or other obligation owed to or by the chargor and which is part of the secured property.
- (g) make, enforce, settle, and compromise all claims in respect of any confiscation, resumption, forfeiture, or compulsory acquisition of any secured property.
- (h) delegate to any person any right (including this right of delegation) under this document.



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- (i) do anything necessary to perform or observe any of the chargor's obligations under this document.
- (j) do or cause to be done anything to protect the priority of this document, to protect the chargor's or the chargee's right, title or interest in the secured property, to enforce this document, to recover the secured money or to protect or enhance the secured property; and
- (k) do anything incidental or conducive to the exercise of any of its other rights under this document.

#### (10) Receivers

The chargee may:

- (a)(i) either before or after it has taken possession of the secured property and either before or after an order has been made or a resolution passed for the winding up of the chargor, appoint in writing any one or more persons to be a receiver or receiver and manager of the secured property or a part of it; and
- (ii) appoint a different receiver or receiver and manager for different parts of the secured property.
- (b) if more than one person is appointed as receiver of any property, empower them to act jointly or jointly and severally.
- (c) remove the receiver, appoint another in his or her place if the receiver is removed, retires, or dies, and reappoint a receiver who has retired or been removed; and
- (d) fix or vary the remuneration of the receiver.

#### (11) Agent

The chargee may appoint any person or any two or more persons jointly and severally as its agent to exercise any of its rights under this document and the provisions of cl 11.1(10) apply as if the agent was a receiver.

#### 3.9.2 General

The interpretation of any right set out in cl 11.1 shall not be restricted by reference to or inference from any other right.

**FREEZING BANK ACCOUNTS ASSOCIATED WITH ELAINE D PAPAS AND CITIBANK N.A.**



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I have confirmed by Notice that I have paid USD\$2,023,600,000.00 and will pay a further USD\$6,000,000.00 to the Vendor under the Asset Purchase Agreement as Chargee and have assumed the Vendor's rights as joint Grantee/ Chargee and a further USD\$16,400,000.00 to Steve Bailey trading as OenoViva (Alberta) consequently I remain the sole Grantee/ Chargee and have crystallised my personal property chargeable security Interests and provided this Notice of Demand for Payment/ Notice of Crystallisation/ Notice of Seizure/ Notice of Retention and Notice of Appointment as Managing Controller to the Law Office of Elaine D. Papas (Managing Controller Appointed) and Citibank N.A. (Managing Controller Appointed) such that the account shown as ANNEXURE to the ASSET PURCHASE AGREEMENT has become my Personal Property and Mr Yip is instructed to Freeze that account forthwith and without delay along with all other Accounts held with Citibank by Elaine D. Papas.

The inevitable consequence of the decisions and conduct of the Grantees/ Chargees is Dishonour of the entirety of the Cashe Assets of the Drawer held with the Drawee/ Acceptor and Otherwise incurring 300% multiplied by Infinite M1 Cash Value escalating at a rate of 300% multiplied by the rate that could be achieved from a a Bullet Trade Private Placement Program of 200% per day or otherwise by invitation from US Treasury of up to 300% per day.....compounding from the date of the act of Insolvency

ALL RIGHTS RESERVED

Kind Regards



Signature: \_\_\_\_\_

Name / Title: ANDREW MORTON GARRETT: Global Chairman/ Managing Trustee of the Boards of Trustees of the Andrew Garrett Family Irrevocable Living Trust trading as OenoViva Capital Resources (Global) and the Better World Future Fund (Global) , Global International Crown Unitary Executive, Global International Crown Attorney General, Global Chief Justice of International Crown Court of Justice, Global Chief Justice of International Crown Criminal Court for Abolition of Impunity, Global International Crown Managing Director., Global International Crown Licensor of Judicial, Quasi-Judicial and Administrative Discretionary Public Powers, Global International Crown Trustee In Bankruptcy, Global International Crown Liquidator, Global International Crown Managing Controller, Global International Crown Receiver and Manager.



## ANNEXURE 1

**From:** andrew.garrett@betterworldfuturefund.org <andrew.garrett@betterworldfuturefund.org>

**Sent:** Monday, 6 October 2025 12:19 PM

**To:** 'Winston John' <wjinternationaltrust@gmail.com>; 'Clark Hills' <clark@gtdepository.com>; 'SABARAP56@YAHOO.COM' <SABARAP56@YAHOO.COM>; 'jenne.garrett-esch@oenoviva-capital-resources.com' <jenne.garrett-esch@oenoviva-capital-resources.com>; 'secretary@rba.gov.au' <secretary@rba.gov.au>; 'governor@rba.gov.au' <governor@rba.gov.au>; 'Enquiry CEO/CEO' <ceo@ceo.gov.hk>; 'taxpf@ird.gov.hk' <taxpf@ird.gov.hk>; 'cfo.global@oenoviva-capital-resources.com' <cfo.global@oenoviva-capital-resources.com>

**Cc:** 'declan.barnett@privategoldreservebank.com' <declan.barnett@privategoldreservebank.com>; 'cfo.global@dynamic-capital-bank.com' <cfo.global@dynamic-capital-bank.com>; 'ceo@gspholding.com.br' <ceo@gspholding.com.br>; 'seref@gspholding.com.br' <seref@gspholding.com.br>; 'serefgenc@gspholding.com.br' <serefgenc@gspholding.com.br>; 'coo.global@privategoldreservebank.com' <coo.global@privategoldreservebank.com>; 'ceo.senegal.thegambia@betterworldfuturefund.org' <ceo.senegal.thegambia@betterworldfuturefund.org>; 'ceo.senegal.thegambia@dynamic-capital-bank.com' <ceo.senegal.thegambia@dynamic-capital-bank.com>; 'ceo.saudi-arabia@oenoviva-capital-resources.com' <ceo.saudi-arabia@oenoviva-capital-resources.com>; 'chairman@privategoldreservebank.com' <chairman@privategoldreservebank.com>; 'Hopkalo Kseniia' <admin@betterworldfuturefund.org>

**Subject:** AMG 9107h TFM 81788; HCMP-1855-2022; BETTER WORLD FUTURE FUND DIAMOND CONFIRMATION AUSTRAC FINANCIAL TRANSACTION REPORTS

TO: TIME PRODUCTIONS LLC  
MR WINSTON R JOHN JNR.

TO: MR CARLOS CESAR ARRUDA  
CEO OF GSP BANCO LTDA  
CC MR SEREF GENC (TRANSLATOR)

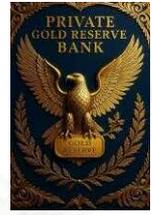
TO; MRS MICHELLE BULLOCK, GOVERNOR  
MR ANTHONY LEONARD DICKMAN, ACTING SECRETARY,  
RESERVE BANK OF AUSTRALIA (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED)  
(" THE RBA")

TO; PRIVATE SECRETARY CHAN  
OFFICE OF THE CEO OF SAR HONG KONG

TO; Ms YUNG  
DEPARTMENT OF INLAND REVENUE OF SAR HONG KONG

CC: GLOBAL TRUST DEPOSITORY  
ATTN MR CLARK HILLS

CC: INVEST USA H.E. LLC



ATTN MR RAPHAEL AHARNOROFF

CC: MRS JENNE MARIE GARRETT-ESCH  
GLOBAL ECO/ GLOBAL COO and JOINT MANAGING TRUSTEE of THE ANDREW GARRETT FAMILY  
IRREVOCABLE LIVING TRUST GROUP OF ENTITIES

CC; MR PAUL DEVERALL RIGBY  
GLOBAL CFO and JOINT TRUSTEE of THE ANDREW GARRETT FAMILY IRREVOCABLE LIVING TRUST  
GROUP OF ENTITIES

CC; MR STEVE BAILEY  
CEO.OVCR (ALBERTA)

**AMG 9107H BETTER WORLD FUTURE FUND DIAMOND CONFIRMATION AUSTRAC  
FINANCIAL TRANSACTION REPORTS**

Dear Winston,

Further to my email on Saturday 4<sup>th</sup> October 2025 lease note attached some relevant law related to the Duty of Paying Banks and dematerialisation (**AMG 9054**) in respect to the three payments issued as CASH (not Cash Equivalent; the payments MUST be treated as CASH) to cover the entire purchase price;

- **AMG 9107c** ALLONGE; OVCR\_BWFF; TIME PRODUCTIONS LLC AND IBOE SN; 63.00416.25 USD\$5,000,000.00 (NON-REFUNDABLE)
- **AMG 9107d** ALLONGE; OVCR\_BWFF; TIME PRODUCTIONS AND IBOE SN; 63.00417.25 USD\$1,000,000,000.00
- **AMG 9017e** - CERTIFIED CASHIERS DEPOSITORY TRANSFER CHECK - SN; 1;00422;25;USD\$995,000,000.00

The exercise of banking discretionary public powers to cause dematerialisation of Value as Public Duty of the Paying Bank is not a multiple-choice question .....the, and the officers MUST presume payment in Good Faith!..... It is the entire purpose of banking licenses is to bring asset values on screen.

Because of the registration of entities related to me in the Tax Jurisdiction of SAR Hong Kong I have copied the Private Secretary for the Honourable CEO of Hong Kong and Ms Yung who is the Profits Assessor of the Department of Inland Revenue who is responsible for assessing entities related to me domiciled in Hong Kong.

The notion that Paying Banks (where accounts are domiciled) can only receive stored value from other Banks is nonsensical.....the means of delivery of the message of transfer of value does not in itself transfer value.....it is the message as an electronic bill of exchange that delivers value.....not the mechanism of delivery.



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There is nothing preventing Citibank from exercising discretion and crediting your escrow agent’s account immediately based on the email provision of evidence of transfer of Value..... In the Yellow Highlight above.

**SETTLEMENT AGENT**

As discussed on the phone the original of the final payment marked as **AMG 9017e** - CERTIFIED CASHIERS DEPOSITORY TRANSFER CHECK - SN; 1;00422;25;USD\$995,000,000.00 is being delivered to Mr Raphael Aharonoff who will act as my settlement agent to ensure delivery of full title of the SKR and underlying Asset to the Benefit of the Trustees of the Better World Future Fund

**AUSTRAC FINANCIAL REPORTS**

Because of the systemic corruption I have experienced with the Reserve Bank of Australia (Liquidator and Managing Controller Appointed) that led to “the Main Proceedings” in the Honourable High Court of Hong Kong it has been necessary to transfer value in two steps

- **AMG 9017i** LFKBJR-613632 Cross Border Movement USD\$2,000,000,000.00 GSP Banco, (Aust.) **CASH IN** to GSP Banco, (Goias) (**attached**),
- **AMG 9017j** PFKBJR-286770 Cross Border Movement USD\$2,000,000,000.00 GSP Banco (Goias) **CASH OUT** to Citibank (**attached**),

**NSD-741-2023;**

It was that corruption referred to in my letter to Justice Michael Lee dated 1<sup>st</sup> May 2024 (**AMG 8617 Annexure 6a**); the ulterior collateral purpose of the Australian Prudential Regulatory Authority (APRA) in bringing proceedings (NSD-741-2023; *APRA v ANDREW MORTON GARRETT*) in the NSW Federal Court for the District of New South Wales and the events engineered around that Timing to derail the transaction referred to in that letter.....my family Trust assets have been previously assessed as to bona fide nature of value by a New York Financial District License holder.....that value is also the subject of Res Judicata Common Law Contractual, Equitable Collateral Issue Estoppel arising from Judgment delivered on the 29<sup>th</sup> July 2024.....after Justice Lee decided he did not want hear my Notice of Enforcement lodged in the Federal Court of Australia on the 5<sup>th</sup> May 2024 now produced and shown as exhibit **AMG 8092 NSD-741-2023 THE KING v AUSTRALIA NOTICE OF ENFORCEMENT** In the Matter of the Crown 05.05.2024.

I applied for a Banking License in Australia on the 5<sup>th</sup> January 2016, I note during our call that you referred to the Non-Registration of Dynamic Capital Bank when clearly the ABN below is evidence of Registration .....which evidence APRA avoided placing before the Court.



Australian Government  
Australian Business Register

### Australian Business Register

01 September 2022

Australian business number (ABN)	97 236 690 409
Entity name	The Trustee for Dynamic Capital Bank
ABN status	Active
ABN registration date	05 January 2016
Postal address	Unit 3 11 HARVEY ST NAILSWORTH SA 5083
Business address	L 6 111 MACQUARIE ST HOBART TAS 7000
Email address	admin@dynamic-capital-bank.com
Type of entity	Discretionary Trading Trust
ANZSIC code	6419 - Other Auxiliary Finance And Investment Services
Associate name	Position held
MR ANDREW MORTON GARRETT	Trustee

The Money Laundering and Terrorism Financing Events in my life have been truly extraordinary a part of which story is told in my recent "Letter to my Family" produced and shown at <https://oenoviva-capital-resources.com/wp-content/uploads/2025/09/AMG-Timeline-p-1-9-v3.pdf>

I (Licensor) act for the King (Licensee).....long story!

**BETTER WORLD FUTURE FUND DIAMOND**

In accordance with your wishes and my obligations as Global Managing Trustee of the Better World Future Fund the Better World Future Fund Diamond has been acquired and paid for in accordance with law exclusively for humanitarian purposes.

KIND REGARDS

ANDREW MORTON GARRETT