

# The Negotiable Instruments Act, 1881

( ACT NO. XXVI OF 1881 )

## **<sup>1</sup>♣An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.**

### Preamble

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows:-

## **CHAPTER I PRELIMINARY**

**Short title** 1. This Act may be called the Negotiable Instruments Act, 1881.

**Commencement** It extends to the whole of Bangladesh; but nothing herein contained affects the provisions of <sup>2</sup>[Articles 23 and 24 of the Bangladesh Bank Order, 1972]; and it shall come into force on the first day of March, 1882.

**Application of the Act** <sup>3</sup>[1A. Every negotiable instrument shall be governed by the provisions of this Act, and no usage or custom at variance with any such provision shall apply to any such instrument.]

**[Repealed]** 2. [Repealed by the Amending Act, 1891 (Act No. XII of 1891).]

**Interpretation-clause.** 3. In this Act, unless there is anything repugnant in the subject or context,-  
(a) "accommodation party" means a person who has signed a negotiable instrument as a maker, drawer, acceptor or indorser without receiving the value thereof and for the purpose of lending his name to some other person;  
(b) "banker" means a person transacting the business of accepting, for the purpose of lending or investment, of deposits of money from the public,

The Negotiable Instruments Act, 1881  
 repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, and includes any Post Office Savings Bank;

(c) “bearer” means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer;

(d) “delivery” means transfer of possession, actual or constructive, from one person to another;

(e) “issue” means the first delivery of a promissory note, bill of exchange or cheque complete in form to a person who takes it as a holder;

(f) “material alteration” in relation to a promissory note, bill of exchange or cheque includes any alteration of the date, the sum payable, the time of payment, the place of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor's assent; and

(g) “notary public” includes any person appointed by the Government to perform the functions of notary public under this Act and a notary appointed under the Notaries Ordinance, 1961.

## CHAPTER II OF NOTES, BILLS AND CHEQUES

### “Promissory note”

4. A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument. Illustrations

A signs instruments in the following terms:

(a) “I promise to pay B or order Taka 500.”

(b) “I acknowledge myself to be indebted to B in Taka 1,000 to be paid on demand, for value received.”

(c) “Mr. B, I O U Taka 1,000.”

(d) “I promise to pay B Taka 500 and all other sums which shall be due to him.”

(e) "I promise to pay B Taka 500, first deducting thereout any money which he may owe me."

(f) "I promise to pay B Taka 500 seven days after my marriage with C."

(g) "I promise to pay B Taka 500 on D's death, provided D leaves me enough to pay that sum."

(h) "I promise to pay B Taka 500 and to deliver to him my black horse on 1st January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

### **"Bill of exchange"**

5. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at fixed or determinable future time a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional", within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain," within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is payable at the current rate of exchange, and although it is to be paid in stated instalments and contains a provision that on default of payment of one or more instalments or interest, the whole or the unpaid balance shall become due.

Where the person intended can reasonably be ascertained from the promissory note or the bill of exchange, he is a "certain person" within the

The Negotiable Instruments Act, 1881  
 meaning of this section and section 4, although he is misnamed or designated by description only.

An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with-

- (a) an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited to the amount, or
- (b) a statement of the transaction which gives rise to the note or bill, is unconditional.

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

**“Cheque”**

6. A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

**“Drawer”**

**“Drawee”**

**“Drawee in case of need”**

**“Acceptor”**

**“Acceptor for honour”**

**“Payee”**

7. The maker of a bill of exchange or cheque is called the “drawer;” the person thereby directed to pay is called the “drawee.”

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need.”

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”.

When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour.” “Acceptor for honour”

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee”.

**“Holder”**

“Payee”

8. The "holder" of a promissory note, bill of exchange or cheque means the payee or indorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a benamidar. "Holder"

Explanation - Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.

**"Holder in due course"**

9. "Holder" in due course" means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective. "Holder in due course"

Explanation - For the purposes of this section the title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon by reason of the provisions of section 58.

**"Payment in due course"**

10. "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

**Inland instrument**

11. A promissory note, bill of exchange or cheque drawn or made in Bangladesh, and made payable in, or drawn upon any person resident in, Bangladesh shall be deemed to be an inland instrument.

**Foreign instrument**

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

**"Negotiable instrument"**