

**M O N T S E R R A T**

**NO. 6 OF 2009**

**BILLS OF EXCHANGE (AMENDMENT) ACT, 2009**

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
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5. Insertion of new section 73A
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I ASSENT

Sarita Francis  
Governor (Ag.)

DATE: 16.12.2009

**MONTSERRAT**

**NO. 6 OF 2009**

**AN ACT** TO AMEND THE **BILLS OF EXCHANGE ACT (CAP. 15.12)**.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council of Montserrat and by the Authority of the same as follows:—

**Short title**

1. This Act may be cited as the Bills of Exchange (Amendment) Act, 2009.

**Amendment of section 2**

2. Section 2 of the Bills of Exchange Act, (hereinafter referred to as “the principal Act”), is amended by inserting immediately after the definition of “issue” the following definition—

““**Minister**” means the Minister responsible for Finance;”.

**Insertion of new sections 45A and 45B**

3. The principal Act is amended by inserting after section 45 the following new sections—

**“Presentment of cheque for payment: alternative place of presentment**

**45A. (1)** Notwithstanding section 45(d), a banker may by notice published in the *Gazette*—

- (a) specify an address at which a cheque drawn on him may be presented; and

(b) cancel that address.

(2) A cheque is presented at the proper place if it is presented at an address specified by the banker on whom it is drawn in accordance with subsection (1) and the banker has not cancelled that address in accordance with that subsection.

**Presentment of cheque for payment: alternative means of presentment by banker**

**45B. (1)** A banker may present a cheque for payment to the banker on whom it is drawn by notifying him of its essential features by electronic means or otherwise, instead of by presenting the cheque itself.

(2) If a cheque is presented for payment under this section, presentment need not be made at the proper place or at a reasonable hour on a business day.

(3) If, before the close of business on the next business day following presentment of a cheque under this section, the banker on whom the cheque is drawn requests the banker by whom the cheque was presented to present the cheque itself—

- (a) the presentment under this section shall be disregarded; and
- (b) this section shall not apply in relation to the subsequent presentment of the cheque.

(4) A request under subsection (3) for the presentment of a cheque shall not constitute dishonour of the cheque by non-payment.

(5) Where presentment of a cheque is made under this section, the banker who presented the cheque and the banker on whom it is drawn shall be subject to the same duties in relation to the collection and payment of the cheque as if the cheque itself had been presented for payment.

(6) For the purposes of this section, the essential features of a cheque are—

- (a) the serial number of the cheque;
- (b) the code which identifies the banker on whom the cheque is drawn;
- (c) the account number of the drawer of the cheque;
- (d) the amount of the cheque entered by the drawer of the cheque; and
- (e) the signature of the drawer.”.

**Insertion of a new section 52A**

4. The principal Act is amended by inserting after section 52 the following new section—

**“Holder not obliged to exhibit bill to secure payment**

**52A. (1)** Section 52(4) does not apply to a cheque —

(a) presented for payment;

(b) paid;

in accordance with section 45B.

(2) Sub-section (1) does not apply to cheques drawn before the date of commencement of this section.”.

#### **Insertion of a new section 73A**

5. The principal Act is amended by inserting after section 73 the following new section—

##### **“Cheque certification**

**73A. (1)** A cheque is certified when it is endorsed by a drawee bank with the words “certified”, “accepted” or words of similar effect and issued by the drawee bank to the payor.

(2) Upon certification of a cheque, the drawee bank shall immediately and irrevocably segregate the amount indicated on the cheque exclusively for the purpose of the proper payment of the cheque in due course to the payee or endorsee of the payee.

(3) A certified cheque shall be subject to countermand by the payor if—

(a) the payor has lawful possession; or

(b) there has been fraud or other like impropriety and the cheque has not been delivered to a *bona fide* holder for value without notice.

(4) An unpaid certified cheque shall be a first charge on the assets of a bankrupt or otherwise insolvent drawee bank and paid out of the segregated account to which it was placed or was deemed to have been placed.”

#### **Amendment of section 80**

6. Section 80 of the principal Act is amended by inserting the words “including a cheque which is not transferable” immediately after the words “crossed cheque”.

#### **Insertion of a new section 81A**

7. The principal Act is amended by inserting after section 81 the following new section—

##### **“Non transferable cheques**

**81A.** Where a cheque is crossed and bears across its face the words “account payee” or “a/c payee”, either with or without the word “only”, the cheque shall not be transferable, but shall only be valid as between the parties thereto.”

**Replacement of section 82**

8. The principal Act is amended by deleting section 82 and substituting the following—

**“Protection of banker**

**82. (1)** Where a banker in good faith and without negligence—

- (a) receives payment from a customer of an instrument to which this section applies;
- (b) having credited a customer’s account with the amount of such an instrument, receives payment thereof for himself; or
- (c) receives payment for a customer of a cheque crossed generally or specially to himself,

and the customer has no title, or a defective title, to the instrument, the banker does not incur any liability to the true owner of the instrument by reason only of having received payment for it.

**(2)** This section applies to the following instruments—

- (a) cheques including cheques which under section 81A or otherwise are not transferable;
- (b) any document issued by a customer of a banker, which though not a bill of exchange, is intended to enable a person to obtain in payment from that banker the sum mentioned in the document;
- (c) any document issued by a public officer which is intended to enable any person to obtain payment from the Accountant General of the sum mentioned in the document but is not a bill of exchange,
- (d) any draft payable on demand drawn by a banker upon himself, whether payable at the head office or some other office of his bank.

**(3)** A banker is not to be treated for the purposes of this section as having been negligent by reason only of his failure to concern himself with—

- (a) the absence of, or an irregularity in, the endorsement of an instrument; or
- (b) the purported endorsement of a cheque which is not transferable under section 81A or otherwise.

**(4)** A banker receives payment of a crossed cheque for a customer within the meaning of this section, notwithstanding that he credits his customer’s account with the amount of the cheque before receiving payment for it.”

**Insertion of a new section 96A**

9. The principal Act is amended by inserting after section 96 the following new section—

**“Regulations**

**96A.** The Governor in Council may make Regulations for giving effect to the provisions of this Act, and without limiting the generality of the foregoing, may make Regulations respecting —

- (a) forms necessary for the administration of this Act;
- (b) penalties that may be imposed for violations of Orders or Regulations made under this Act but no such penalty shall exceed a fine of \$100,000 or imprisonment for a term exceeding 12 months;
- (c) any other matter required for the efficient administration of this Act.”

**SPEAKER**

Passed the Legislative Council this 24th day of November, 2009.

**CLERK OF COUNCILS**





## **OBJECTS AND REASONS**

The Bills of seeks to amend the Bills of Exchange Act to—

- (a) allow cheques to be presented at an address in Montserrat specified by the paying bank in the Official Gazette.
- (b) enable cheques to be presented for payment by notification of their essential features by electronic means or otherwise, rather than by physical presentment.
- (c) to render inapplicable, section 52(4) of the Principal Act, (which concerns the duties of holders of bills), to cheques presented as provided by section 45B.
- (d) allow a certified copy of an unendorsed cheque to be accepted as evidence of receipt of payment.

John Skerritt  
Financial Secretary