



**Guideline for Clarity and Effective
Implementation of the Negotiable
Instrument Act of Bhutan (NIA) - Cheque
2022**

PRELIMINARY

Pursuant to Section 17 of the Negotiable Instrument Act of Bhutan 2021 (NIA) (amendment) and in line with the Negotiable Instrument Act of Bhutan 2000, the RMA hereby has adopted the Guideline for Effective Implementation of the NIA - Cheque 2022 and shall come into force from 1st July 2022.

1. PURPOSE

In addition to the provisions specified in the NIA of Bhutan 2000 and 2021 Amendments, additional provisions are formulated and adopted by the RMA for efficient and effective implementation of the NIA of Bhutan 2000 and 2021 Amendments specifically for cheques.

2. DEFINITION

The following definitions defined in the Acts are reflected herein to form a part of this Guideline:

1. Cheque: “a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form”;
2. Company: “means anybody corporate and includes a firm or other association of individuals”;
3. Drawer: “the maker of a cheque is called the drawer”;
4. Drawee: “the person thereby directed to pay is called the drawee”;
5. Electronic cheque: “a cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secured system with a digital signature (with or without biometrics signature) and asymmetric cryptosystem or with an electronic signature, as the case may be”;
6. Holder: “the holder of a cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto”;
7. Holder in due course: “means any person who for consideration became the possessor of a cheque if payable to bearer, or the payee or indorsee thereof, if payable to order,

before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title”;

8. Indorsement: “when a maker or the holder of the cheque signs on the instrument is termed as indorsement”;
9. Indorsement “in blank” and “in full”- “indorsee” If the indorser only signs on the cheque, the indorsement is said to be “in blank”, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full”, and the person so specified is called the “indorsee” of the instrument;
10. Negotiation: “When a cheque is transferred to the holder, the instrument is said to be negotiated”;
11. Payee: “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”;
12. 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”; and
13. Truncated cheque: “means a cheque which is truncated during the course of a clearing cycle, either by the clearinghouse or by the bank whether paying or receiving payment, immediately on the generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing”.

Any other terms which are used in this Guideline and not otherwise defined herein shall have the same meaning as defined in the Act.

3. PARTIES TO CHEQUE

The parties to a cheque shall include but are not limited to the followings:

1. Drawer/payer
2. Payee/holder
3. Drawee/Bank
4. Indorser
5. Indorsee
6. Agent
7. Representative

4. LIABILITIES TO CHEQUE

- a) **Liability of an agent:** An agent who signs his name to a cheque shall be personally liable. However, an agent signing on a cheque shall not be liable if he is induced to sign (Section 28 of NIA 2000).
- b) **Liability of legal representative:** A legal representative of a deceased person who signs his name to a cheque shall be liable personally unless there is a clear understanding that his liability shall be limited to the extent of the assets received by him (Section 29 of NIA 2000).
- c) **Signature essential to liability:** A person shall be liable if he signs in a trade or assumed name as if he had signed its own name (Section 29A of NIA 2000).
- d) **Forged or unauthorized signature:** If a signature on a cheque is acquired through forgery or unauthorized means then the cheque shall be invalid.
- e) **Liability of drawer:** In case the drawer has been provided due notice of dishonour of a cheque by the acceptor or drawee, it shall be the duty of the drawer to compensate the holder (Section 30 NIA 2000).
- f) **Liability of the bank/drawee giving payment of the cheque:** The bank having sufficient funds of the drawer in his account, applicable to the payment of the cheque must pay the cheque, and, in default of such payment must compensate the drawer or holder in due course for any loss or damage caused by such default (Section 31 of NIA 2000).
- g) **General crossed cheque:** Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, or of two parallel transverse lines simply, either with or without the words "not negotiable" and the cheque shall be deemed to be generally crossed (Section 117 of NIA 2000).
- h) **Special crossed cheque:** Where a Cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable" and the Cheque shall be deemed to be specially crossed (Section 118 of NIA 2000).

5. NEGOTIATION

- a) **Negotiation by delivery:** A cheque payable to the bearer is negotiable by delivery thereof. However, A cheque presented with the condition that it will not take effect unless and until a specific event occurs is not negotiable.
- b) **Negotiation by indorsement:** Subject to Section 58, a cheque payable to order, is negotiable by the holder by indorsement and delivery (Section 48 of NIA 2000).
- c) **Conversion of blank indorsement into full:** Any holder may convert blank indorsement into full indorsement by writing above the indorser's signature a direction to pay the amount to or the order of himself or some other person (Section 49 of NIA 2000).
- d) **Effect of indorsement:** The cheque can be further endorsed or the right of indorsement can be excluded or restricted (Section 50 of NIA 2000).
- e) **Who may negotiate:** Any person can negotiate the cheque, if it is not restricted or excluded as mentioned in Section 50 of NIA 2000 (Section 51 of NIA 2000).
- f) **Holder deriving title from the holder in due course:** A holder of a cheque who derives title from a holder in due course has the rights thereon of that holder in due course (Section 53 of NIA 2000).
 - a. A holder in due course holds the cheque free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the cheque for the full amount thereof against all parties liable thereon.
- g) **Instrument endorsed in the blank:** A cheque endorsed in blank is payable to the bearer thereof even though originally payable to order (Section 54 of NIA 2000).
- h) **Conversion of indorsement in blank into indorsement in full:** Only a person deriving a title from an indorser shall claim the full amount, whether the cheque has been endorsed in blank or endorsed in full later on (Section 55 of NIA 2000).
- i) **Indorsement for part of the sum due:** No cheque can be negotiated which is endorsed to transfer only a part of the amount appearing to be due on the cheque (Section 56 of NIA 2000).
- j) **Legal representative cannot by delivery only negotiate an instrument endorsed by the deceased:** The legal representative of a deceased person cannot negotiate by delivery even though the cheque has been endorsed by the deceased which is payable to order and endorsed by the deceased but not delivered (Section 57 of NIA 2000).

- k) **Cheque obtained by unlawful means:** A person obtaining a cheque by means of any offence or fraud or unlawful consideration or the person who claims through a person who found the lost cheque, cannot make a claim upon the amount mentioned on such cheque with drawer, acceptor or holder unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course (Section 58 of NIA 2000).
- l) **Cheque acquired after dishonour or when overdue:** The holder of a cheque, who has acquired it after dishonour, whether by non-acceptance or non-payment or after maturity, has only the rights thereon of his transferor of such cheque (Section 59 of NIA 2000).

6. PRESENTMENT OF CHEQUES

- a) **Presentment for payment:** Cheque must be presented for payment to the maker, acceptor or drawee by or on behalf of the holder within the business hours, in default of such presentment, the other parties are not liable to such holder (Section 64 of NIA 2000).
- b) **Presentment when maker, etc., has no known place of business or residence:** If the maker, acceptor, or drawee of a cheque has no known place of business or residence, the instrument may be presented to him in person for payment or acceptance wherever he is located.
- c) **What Constitutes valid presentment and mode of presentment:** A copy of the original negotiable instrument certified by the holder delivered to the liable party shall be deemed valid presentment. However, if the liable party demands an original cheque, the holder shall allow to inspect during business hours and failure from the holder to do so shall deem the presentment invalid (Section 71A of NIA 2000).
- d) **Presentment of cheque to charge drawer:** A cheque must be presented to the bank in order to charge a drawer before it is altered to the prejudice of the drawer and bank (Section 72 of NIA 2000).
- e) **Presentment of cheque to charge any other person:** A cheque must be presented within a reasonable time after delivery to charge such person (Section 73 of NIA 2000).
- f) **Presentment of instrument payable at demand:** A cheque payable on demand must be presented for payment within a reasonable time after it is received by the holder (Section 74 of NIA 2000).

- g) **Presentment by or to agent, representative of deceased, or assignee of insolvent:** Presentment for acceptance or payment may be made to the agent, legal representative or the assignee as the case may be of the maker, acceptor and drawee (Section 75 of NIA 2000).
- h) **Excuse for delay in presentation for acceptance of payment:** Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder. When the cause of the delay ceases to operate, presentment must be made within a reasonable time (Section 75A of NIA 2000).
- i) **When presentment unnecessary:** No presentment for payment is necessary, and the instrument shall be deemed to be dishonoured at the due date for presentment, in any of the following cases (Section 76 of NIA 2000):
- i. If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or could not be found, or closes his place of business, or does not show up at the specified place mentioned;
 - ii. As against any party sought to be charged therewith if he has engaged to pay notwithstanding non-presentment;
 - iii. As against the drawer, if the drawer could not suffer damage from the want of such presentment; and
 - iv. where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be affected.
- j) **Difference between figure and word:** In case there is a difference between the figure and word of the amount to be paid on the cheque, the amount written in the word shall be the amount to be paid (Section 18 of NIA 2000).

7. DELIVERY OF INSTRUMENT ON PAYMENT OR INDEMNITY IN CASE OF LOSS:

If a holder cannot produce or loses the cheque then the person liable to pay shall be indemnified against any further claim (Section 81 of NIA 2000).

8. DISCHARGE FROM LIABILITY ON CHEQUES

- a) **Discharge from liability:** The maker, acceptor or indorser respectively of a cheque is discharged from liability thereon (Section 82 of NIA 2000):
 - i. if holder cancels such acceptor's or indorser's name with the intent to discharge him, and to all parties claiming under such holder;
 - ii. if holder discharge such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge; or
 - iii. by payment to all parties.
- b) **When a cheque is not duly presented and the drawer is damaged thereby:** If the banker fails to make a presentment which causes drawer damages, then he shall be discharged to the extent of such damage (Section 84 of NIA 2000).
- c) **Effect of material alteration:** Any material alteration made shall discharge the party from its liability unless it was made with consensus to carry out the intention of the original parties (Section 87 of NIA 2000).
- d) **Acceptor or indorser bound notwithstanding previous alteration:** An acceptor or indorser of a cheque is bound by the acceptance or indorsement notwithstanding any previous alteration of the cheque (as per the Section 88 of NIA 2000)
- e) **Payment of instrument on which alteration is not apparent:** where a cheque has been materially altered but does not appear to have been altered or a cheque does not appear to be crossed or to have had a crossing which has been obliterated, when the payment is made, a person or banker liable to pay shall be discharged from any liability from it (Section 89 of NIA 2000).

9. NOTICE OF DISHONOUR

- a) **Dishonour by non-payment:** A cheque is said to be dishonoured when a drawee/bank fails to make the payment to the holder of a cheque (Section 92 of NIA 2000).
- b) **By and to whom notice should be given:** When a cheque is dishonoured by non-acceptance or non-payment, the holder shall give the notice to all the relevant persons liable to make the payment (Section 93 of NIA 2000).
- c) **Mode in which notice may be given:** Notice of dishonour may be given to an authorised agent, legal representative, or assignee in oral or written form in a reasonable time at the place of business or residence (Section 94 of NIA 2000).

- d) **Party receiving must transmit notice of dishonour:** Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time (Section 95 of NIA 2000).
- e) **When notice of dishonour is unnecessary:** No notice of dishonour is necessary in the following conditions (Section 98 of NIA 2000):
- i. When the party to whom notice of dishonour is dispatched is dead;
 - ii. When the notice is dispatched in the hand of the party liable for payment;
 - iii. in order to charge the drawer, the holder orders to stop payment;
 - iv. When the party charged does not suffer damages if notice of dishonour is not served;
 - v. When the party liable to pay could not be found after the search, or the party bound to give notice could not give due to unavoidable circumstances;
 - vi. when the acceptor is also a drawer;
 - vii. when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the negotiable instrument.

10. REASONABLE TIME

- a) **Reasonable time:** In determining what is a reasonable time for presentment for acceptance or payment or for giving notice of dishonour, regard shall be given to the nature of the instrument and public holidays shall be excluded (Section 99 of NIA 2000).
- b) **Reasonable time of giving notice of dishonour:** If the holder and party to whom notice of dishonour live in different places, notice shall be dispatched by the next day after the day of dishonour. If it is in the same place, notice shall be dispatched in time to reach its destination on the next day after the day of dishonour (Section 100 of NIA 2000).
- c) **Reasonable time for transmitting such notice:** A party receiving notice of dishonour shall transmit to the prior party whom he seeks to enforce his right within the same time after its receipt (Section 101 of NIA 2000).

11. COMPENSATION

- a) **Rules as to compensation:** The compensation payable in case of dishonour of cheque by any party liable to the holder or any indorsee, shall be determined by the following rules (Section 111 of NIA 2000):
- i. The holder is entitled to the amount due upon the cheque together with the expense incurred in presenting it or towards its dishonour;
 - ii. When the person liable to pay resides at a place different from that at which the cheque was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
 - iii. An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at fifteen per cent per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour of payment; and
 - iv. When the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places. (Section 111 of NIA 2000)

12. CROSSED CHEQUES

- a) **Payment of cheque crossed specially more than once:** Where a cheque is crossed specially to more than one banker, the banker on whom it is drawn shall refuse payment thereof. (Section 121 of NIA 2000).
- b) **Payment in due course of the crossed cheque:** Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof (Section 122 of NIA 2000).
- c) **Payment of crossed cheque out of due course:** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed especially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

- d) **Cheque bearing “not negotiable”:** Except for the drawer, no person can negotiate a cheque crossed generally or especially, bearing in either case the words “non-negotiable” (Section 124 of NIA 2000).
- e) **Non-liability of banker receiving payment of cheque:** Where a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or especially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment (Section 125 of NIA 2000).

13. DISHONOUR OF CHEQUE

Process for the dishonour of a cheque (Section 11 of NIA (amendment 2021):

(a) a payee shall present the cheque before a bank for payment within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. Failing to present a cheque before a bank within 6 months shall render the cheque invalid (Section 131 of NIA 2000);

(b) a payee after learning from the bank that the drawer does not have sufficient balance in the account shall accordingly notify the drawer within 30 days from the date of knowledge that his account does not have sufficient balance (Section 12 of NIA (amendments) 2021);

(c) a drawer shall make the payment or make available sufficient balance in the account within 60 days of the receipt of the said notice (Section 13 of NIA (amendments) 2021);

(d) the drawer has no account with the drawee at the time the cheque is issued (as per Section 14 of NIA (amendments) 2021); and

(e) a complaint shall be made in writing by the payee or, as the case may be, the holder in due course of the cheque. Such complaint should be made within one month of the date on which the cause of action arises under Section 13 of NIA (amendments) 2021.

Illustration:

If Mr A issues a cheque to Mr B dated 5th May 2022. Mr B has to withdraw on or before 5th November 2022 (6 months validity). If Mr B at the time of withdrawing learns that Mr A has an insufficient balance in his account, Mr B should inform Mr A about the insufficient balance with 30 days' notice (1 month) after being informed by the bank.

Mr A should deposit the amount in his account within 60 days (2 months) of the receipt of the said notice. However, if Mr A fails to deposit the amount within the timeline, Mr B has the right to make an official complaint in writing to the authorized agency to resolve the issue within one month of the date on which the cause of action arises.

14. AMENDMENT

The additions, changes, or repeal of any provision of this Guideline shall be made by the RMA.

15. RULES OF CONSTRUCTION

Unless the context clearly otherwise requires, wherever used in this Guideline, the singular includes the plural and masculine include feminine.
