

Article 52(2)(a)

(See A/CN.9/273, para. 107)

(2) Presentment for payment is dispensed with:

- (a) If the drawer, an endorser or guarantor *has expressly waived* presentment; such waiver: ...

Article 58(2)(a)

(See A/CN.9/273, para. 107)

(2) Protest for dishonour by non-acceptance or by non-payment is dispensed with:

- (a) If the drawer, an endorser or guarantor *has expressly waived* protest; such waiver: ...

Article 63(2)(b)

(See A/CN.9/273, para. 107)

(2) Notice of dishonour is dispensed with:

- (a) ...

- (b) If the drawer, an endorser or guarantor *has expressly waived* notice of dishonour; such waiver: ...

Article 68(4), new (a bis)

(See A/CN.9/273, para. 122)

- (a bis) *In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.*

Article 71, new (1 bis)

(See A/CN.9/273, para. 91)

- (1 bis) *When the amount of an instrument is expressed in a monetary unit of account within the meaning of article 4(11) and does not specify a currency of payment, the instrument is to be paid in the currency of the place of payment. However, this provision does not apply if, between the person making the payment and the person receiving it, the unit of account is transferable.*

2. Draft Convention on International Bills of Exchange and International Promissory Notes: text of draft articles as revised by the Commission at its seventeenth session or by the Working Group on International Negotiable Instruments at its thirteenth or fourteenth session: note by the secretariat (A/CN.9/274)

[Original: Chinese, English, French, Russian and Spanish]^a

This note contains a consolidation of the 1981 draft text set forth in document A/CN.9/211 and the revised draft articles set forth in the annex to document A/CN.9/273. Incorporated are thus all modifications decided by the Commission at its seventeenth session or by the Working Group on International Negotiable Instruments at its thirteenth or fourteenth session. It should be noted that, apart from these modifications adopted by the Commission or the Working Group, there are a number of issues and proposals which the Working Group invited the Commission to consider at its nineteenth session and which are not incorporated in this note. Matters of this kind are, for example, suggestions for inclusion of new provisions (e.g. covering instruments with floating rates of interest; see A/CN.9/273, paras. 93–97) or proposals for redrafting accompanied by alternative wordings (e.g. on article 26(1)(b); see A/CN.9/273, paras. 11–19) or other submissions for possible consideration by the Commission at its nineteenth session (e.g. questions relating to article 2; see A/CN.9/273, paras. 69–71).

^aFor consideration by the Commission, see Report, chapter II (Part One, A, above).

Draft Convention on International Bills of Exchange and International Promissory Notes

Chapter I. Sphere of application and form of the instrument

Article 1

- (1) This Convention applies to international bills of exchange and to international promissory notes.
- (2) An international bill of exchange is a written instrument with the heading “International bill of exchange (Convention of ...)” which:
- (a) Contains, in the text thereof, the words “international bill of exchange (Convention of ...)”;
 - (b) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order;
 - (c) Is payable on demand or at a definite time;
 - (d) Is dated;

(e) Shows that at least two of the following places are situated in different States:

- (i) The place where the bill is drawn;
- (ii) The place indicated next to the signature of the drawer;
- (iii) The place indicated next to the name of the drawee;
- (iv) The place indicated next to the name of the payee;
- (v) The place of payment;
- (f) Is signed by the drawer.

(3) An international promissory note is a written instrument with the heading "International promissory note (Convention of ...)" which:

- (a) Contains, in the text thereof, the words "international promissory note (Convention of ...)";
- (b) Contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to his order;
- (c) Is payable on demand or at a definite time;
- (d) Is dated;
- (e) Shows that at least two of the following places are situated in different States:
 - (i) The place where the note is made;
 - (ii) The place indicated next to the signature of the maker;
 - (iii) The place indicated next to the name of the payee;
 - (iv) The place of payment;
- (f) Is signed by the maker.

(4) Proof that the statements referred to in paragraph (2)(e) or (3)(e) of this article are incorrect does not affect the application of this Convention.

(5) This Convention does not apply to cheques.

Article 2

This Convention applies without regard to whether the places indicated on an international bill of exchange or on an international promissory note pursuant to paragraph (2)(e) or (3)(e) of article 1 are situated in Contracting States.

Chapter II. Interpretation

Section 1. General provisions

Article 3

In the interpretation of this Convention, regard is to be had to its international character, the need to promote

uniformity in its application and the observance of good faith in international transactions.

Article 4

In this Convention:

- (1) "Bill" means an international bill of exchange governed by this Convention;
- (2) "Note" means an international promissory note governed by this Convention;
- (3) "Instrument" means a bill or a note;
- (4) "Drawee" means the person on whom a bill is drawn but who has not accepted it;
- (5) "Payee" means the person in whose favour the drawer directs payment to be made or to whom the maker promises to pay;
- (6) "Holder" means a person in possession of an instrument in accordance with article 14;
- (7) "Protected holder" means the holder of an instrument which, when he took it, was complete or, if an incomplete instrument within the meaning of article 11(1), was completed in accordance with authority given, provided that, when he became a holder:
 - (a) He was without knowledge of a claim to or defence upon the instrument referred to in article 25 or of the fact that it was dishonoured by non-acceptance or non-payment; and
 - (b) The time-limit provided by article 51 for presentment of that instrument for payment had not expired;
- (8) "Party" means any person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor;
- (9) "Maturity" means the date of payment referred to in article 8;
- (10) "Signature" includes a signature by stamp, symbol, facsimile, perforation or other mechanical means* and "forged signature" includes a signature by the wrongful or unauthorized use of such means;
- (11) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States.

*[Article (X) A Contracting State whose legislation requires that a signature on an instrument be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that a signature placed on an instrument in its territory must be handwritten.]

Article 5

For the purposes of this Convention, a person is considered to have knowledge of a fact if he has actual knowledge of that fact or could not have been unaware of its existence.

Section 2. Interpretation of formal requirements

Article 6

The sum payable by an instrument is deemed to be a definite sum although the instrument states that it is to be paid:

- (a) With interest;
- (b) By instalments at successive dates;
- (c) By instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due;
- (d) According to a rate of exchange indicated on the instrument or to be determined as directed by the instrument; or
- (e) In a currency other than the currency in which the amount of the instrument is expressed.

Article 7

- (1) If there is a discrepancy between the amount of the instrument expressed in words and the amount expressed in figures, the amount of the instrument is the amount expressed in words.
- (2) If the amount of the instrument is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made as indicated on the instrument and the specified currency is not identified as the currency of any particular State, the currency is to be considered as the currency of the State where payment is to be made.
- (3) If any instrument states that it is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.
- (4) A stipulation stating that the sum is to be paid with interest is deemed not to have been written on the instrument unless it indicates the rate at which interest is to be paid.

Article 8

- (1) An instrument is deemed to be payable on demand:
 - (a) If it states that it is payable at sight or on demand or on presentment or if it contains words of similar import; or
 - (b) If no time for payment is expressed.
- (2) An instrument payable at a definite time which is accepted or endorsed or guaranteed after maturity is an

instrument payable on demand as regards the acceptor, the endorser or the guarantor.

- (3) An instrument is deemed to be payable at a definite time if it states that it is payable:

- (a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the instrument; or
- (b) At a fixed period after sight; or
- (c) By instalments at successive dates; or
- (d) By instalments at successive dates with the stipulation on the instrument that upon default in payment of any instalment the unpaid balance becomes due.

- (4) The time of payment of an instrument payable at a fixed period after date is determined by reference to the date of the instrument.

- (5) The maturity of a bill payable at a fixed period after sight is determined by the date of the acceptance.

- (6) The maturity of an instrument payable on demand is the date on which the instrument is presented for payment.

- (7) The maturity of a note payable at a fixed period after sight is determined by the date of the visa signed by the maker on the note or, if signature is refused, from the date of presentment.

- (8) Where an instrument is drawn, or made, payable at one or more months after a stated date or after the date of the instrument or after sight, the instrument matures on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument matures on the last day of that month.

Article 9

- (1) A bill may:
 - (a) Be drawn upon two or more drawees;
 - (b) Be drawn by two or more drawers;
 - (c) Be payable to two or more payees.
- (2) A note may:
 - (a) Be made by two or more makers;
 - (b) Be payable to two or more payees.

- (3) If an instrument is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the instrument may exercise the rights of a holder. In any other case the instrument is payable to all of them and the rights of a holder can only be exercised by all of them.

Article 10

A bill may:

- (a) Be drawn by the drawer on himself;
- (b) Be drawn payable to his order.

Section 3. Completion of an incomplete instrument

Article 11

(1) An incomplete instrument which satisfies the requirements set out in subparagraphs (a) and (f) of paragraph (2) or (a) and (f) of paragraph (3) of article 1 but which lacks other elements pertaining to one or more of the requirements set out in paragraph (2) or (3) of article 1 may be completed and the instrument so completed is effective as a bill or a note.

(2) When such an instrument is completed without authority or otherwise than in accordance with the authority given:

(a) A party who signed the instrument before the completion may invoke such lack of authority as a defence against a holder who had knowledge of such lack of authority when he became a holder;

(b) A party who signed the instrument after the completion is liable according to the terms of the instrument so completed.

Chapter III. Transfer

Article 12

An instrument is transferred:

(a) By endorsement and delivery of the instrument by the endorser to the endorsee; or

(b) By mere delivery of the instrument if the last endorsement is in blank.

Article 13

(1) An endorsement must be written on the instrument or on a slip affixed thereto ("*allonge*"). It must be signed.

(2) An endorsement may be:

(a) In blank, that is, by a signature alone or by a signature accompanied by a statement to the effect that the instrument is payable to a person in possession thereof;

(b) Special, by a signature accompanied by an indication of the person to whom the instrument is payable.

Article 14

(1) A person is a holder if he is:

(a) The payee in possession of the instrument; or

(b) In possession of an instrument which has been endorsed to him, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, even if any of the endorsements was forged or was signed by an agent without authority.

(2) When an endorsement in blank is followed by another endorsement, the person who signed this last

endorsement is deemed to be an endorsee by the endorsement in blank.

(3) A person is not prevented from being a holder by the fact that the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or to a defence upon, the instrument.

Article 15

The holder of an instrument on which the last endorsement is in blank may:

(a) Further endorse the instrument either in blank or to a specified person; or

(b) Convert the blank endorsement into a special endorsement by indicating therein that the instrument is payable to himself or to some other specified person; or

(c) Transfer the instrument in accordance with paragraph (b) of article 12.

Article 16

When the drawer or the maker has inserted in the instrument such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred except for purposes of collection.

Article 17

(1) An endorsement must be unconditional.

(2) A conditional endorsement transfers the instrument whether or not the condition is fulfilled.

Article 18

An endorsement in respect of a part of the sum due under the instrument is ineffective as an endorsement.

Article 19

When there are two or more endorsements, it is presumed, unless the contrary is established, that each endorsement was made in the order in which it appears on the instrument.

Article 20

(1) When an endorsement contains the words "for collection", "for deposit", "value in collection", "by procuration", "pay any bank", or words of similar import, authorizing the endorsee to collect the instrument (endorsement for collection), the endorsee:

(a) May only endorse the instrument for purposes of collection;

(b) May exercise all the rights arising out of the instrument;

(c) Is subject to all claims and defences which may be set up against the endorser.

(2) The endorser for collection is not liable upon the instrument to any subsequent holder.

(3) When an endorsement contains the words "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred further except for purposes of collection.

Article 21

The holder of an instrument may transfer it to a prior party or the drawee in accordance with article 12; nevertheless, in the case where the transferee was a prior holder of the instrument, no endorsement is required and any endorsement which would prevent him from qualifying as a holder may be struck out.

Article 22

An instrument may be transferred in accordance with article 12 after maturity, except by the drawee, the acceptor or the maker.

Article 23

(1) If an endorsement is forged, the person whose endorsement is forged or any party who signed the instrument before the forgery has the right to recover compensation for any damage that he may have suffered because of the forgery against:

- (a) The forger;
- (b) The person to whom the instrument was directly transferred by the forger;
- (c) A party or the drawee who paid the instrument directly to the forger.

(2) However, an endorsee for collection shall not be liable under paragraph (1) if, at the later of:

- (a) The time he receives the proceeds of the instrument or
- (b) The time at which he accounts to his principal for them,

he was without knowledge of the forgery, provided that such absence of knowledge was not due to his negligence.

(3) Also, a party or the drawee who pays an instrument shall not be liable under paragraph (1) if, at the time he paid the instrument, he was without knowledge of the forgery, provided that such absence of knowledge was not due to his negligence.

(4) Except as against the forger, the damages recoverable under paragraph (1) may not exceed the amount referred to in article 66 or 67.

Article 23 bis

(1) If an endorsement is made by an agent without authority or power to bind his principal in the matter, the principal or any party who signed the instrument before

such endorsement has the right to recover compensation for any damage that he may have suffered because of such endorsement against:

- (a) The agent;
- (b) The person to whom the instrument was directly transferred by the agent;
- (c) A party or the drawee who paid the instrument directly to the agent.

(2) However, an endorsee for collection shall not be liable under paragraph (1) if, at the later of:

- (a) The time he receives the proceeds of the instrument or
- (b) The time at which he accounts to his principal for them,

he was without knowledge that the endorsement did not bind the principal, provided that such absence of knowledge was not due to his negligence.

(3) Also, a party or the drawee who pays an instrument shall not be liable under paragraph (1) if, at the time he paid the instrument, he was without knowledge that the endorsement did not bind the principal, provided that such absence of knowledge was not due to his negligence.

(4) Except as against the agent, the damages recoverable under paragraph (1) may not exceed the amount referred to in article 66 or 67.

Chapter IV. Rights and Liabilities

Section 1. The rights of a holder and of a protected holder

Article 24

(1) The holder of an instrument has all the rights conferred on him by this Convention against the parties to the instrument.

(2) The holder is entitled to transfer the instrument in accordance with article 12.

Article 25

(1) A party may set up against a holder who is not a protected holder:

- (a) Any defence available under this Convention;
- (b) Any defence based on an underlying transaction between himself and the drawer or a previous holder or arising from the circumstances as a result of which he became a party;
- (c) Any defence to contractual liability based on a transaction between himself and the holder;
- (d) Any defence based on incapacity of such party to incur liability on the instrument or on the fact that such

party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to his negligence.

(2) The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person.

(2 *bis*) A holder who is not a protected holder is subject to a defence under paragraph (1)(b) or to a claim under paragraph (2) of this article only if he took the instrument with knowledge of such defence or claim or if he obtained the instrument by fraud or participated at any time in a fraud affecting it.

(3) A party may not raise as a defence against a holder who is not a protected holder the fact that a third person has a claim to the instrument unless:

(a) Such third person asserted a valid claim to the instrument; or

(b) Such holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery.

Article 26

(1) A party may not set up against a protected holder any defence except:

(a) Defences under articles 29(1), 30, 31(1), 32(3), 49, 53, 59 and 80 of this Convention;

(b) Defences based on the underlying transaction between himself and such holder or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party;

(c) Defences based on the incapacity of such party to incur liability on the instrument or on the fact that such party signed without knowledge that his signature made him a party to the instrument, provided that such absence of knowledge was not due to his negligence.

(2) The rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person, except a valid claim arising from the underlying transaction between himself and the person by whom the claim is raised or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that person.

Article 27

(1) The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and upon the instrument which the protected holder had.

(2) Such rights are not vested in a subsequent holder if:

(a) He participated in a transaction which gives rise to a claim to, or a defence upon, the instrument;

(b) He has previously been a holder, but not a protected holder.

Article 28

Every holder is presumed to be a protected holder unless the contrary is proved.

Section 2. The liability of the parties

A. General provisions

Article 29

(1) Subject to the provisions of articles 30 and 32, a person is not liable on an instrument unless he signs it.

(2) A person who signs an instrument in a name which is not his own is liable as if he had signed it in his own name.

Article 30

A forged signature on an instrument does not impose any liability thereon on the person whose signature was forged. Nevertheless, such person is liable as if he had signed the instrument himself where he has, expressly or impliedly, accepted to be bound by the forged signature or represented that the signature was his own.

Article 31

(1) If an instrument has been materially altered:

(a) Parties who have signed the instrument subsequent to the material alteration are liable thereon according to the terms of the altered text;

(b) Parties who have signed the instrument before the material alteration are liable thereon according to the terms of the original text. Nevertheless a party who has himself made, authorized, or assented to, the material alteration is liable on the instrument according to the terms of the altered text.

(2) Failing proof to the contrary, a signature is deemed to have been placed on the instrument after the material alteration.

(3) Any alteration is material which modifies the written undertaking on the instrument of any party in any respect.

Article 32

(1) An instrument may be signed by an agent.

(2) The signature of an agent placed by him on an instrument with the authority of his principal and showing on the instrument that he is signing in a representative capacity for that named principal, or the signature of a principal placed on the instrument by an agent with his authority, imposes liability on the principal and not on the agent.

(3) A signature placed on an instrument by a person as agent but without authority to sign or exceeding his authority, or by an agent with authority to sign but not showing on the instrument that he is signing in a

representative capacity for a named person, or showing on the instrument that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on the person signing and not on the person whom he purports to represent.

(4) The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the instrument.

(5) A person who is liable pursuant to paragraph (3) and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

Article 33

The order to pay contained in a bill does not of itself operate as an assignment to the payee of funds made available for payment by the drawer with the drawee.

B. The drawer

Article 34

(1) The drawer engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder, or to any subsequent party who pays the bill in accordance with article 66, the amount of the bill, and any interest and expenses which may be recovered under article 66 or 67.

(2) The drawer may exclude or limit his own liability for acceptance or for payment by an express stipulation on the bill. Such stipulation has effect only with respect to the drawer. A stipulation excluding or limiting liability for payment is operative only if another party is or becomes liable on the bill.

C. The maker

Article 35

(1) The maker engages that he will pay to the holder, or to any party who pays the note in accordance with article 66, the amount of the note in accordance with the terms of that note, and any interest and expenses which may be recovered under article 66 or 67.

(2) The maker may not exclude or limit his own liability by a stipulation on the note. Any such stipulation is without effect.

D. The drawee and the acceptor

Article 36

(1) The drawee is not liable on a bill until he accepts it.

(2) The acceptor engages that he will pay to the holder, or to any party who pays the bill in accordance with

article 66, the amount of the bill in accordance with the terms of his acceptance, and any interest and expenses which may be recovered under article 66 or 67.

Article 37

An acceptance must be written on the bill and may be effected:

- (a) By the signature of the drawee accompanied by the word "accepted" or by words of similar import; or
- (b) By the signature alone of the drawee.

Article 38

(1) An incomplete instrument which satisfies the requirements set out in article 1(2)(a) may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.

(2) A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.

(3) When a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the acceptor, the drawer or the holder may insert the date of acceptance.

(4) If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

Article 39

(1) An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.

(2) If the drawee stipulates on the bill that his acceptance is subject to qualification:

- (a) He is nevertheless bound according to the terms of his qualified acceptance;
- (b) The bill is dishonoured by non-acceptance.

(3) An acceptance relating to only a part of the amount of the bill is a qualified acceptance. If the holder takes such an acceptance, the bill is dishonoured by non-acceptance only as to the remaining part.

(4) An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:

- (a) The place in which payment is to be made is not changed;
- (b) The bill is not drawn payable by another agent.

E. *The endorser**Article 40*

(1) The endorser engages that upon dishonour of the instrument by non-acceptance or non-payment, and upon any necessary protest, he will pay to the holder, or to any subsequent party who pays the instrument in accordance with article 66, the amount of the instrument, and any interest and expenses which may be recovered under article 66 or 67.

(2) The endorser may exclude or limit his own liability by an express stipulation on the instrument. Such stipulation has effect only with respect to that endorser.

Article 41

(1) Unless otherwise agreed, a person who transfers an instrument represents to the holder to whom he transfers the instrument that:

- (a) The instrument does not bear any forged or unauthorized signature;
- (b) The instrument has not been materially altered;
- (c) At the time of transfer, he has no knowledge of any fact which would impair the right of the transferee to payment of the instrument against the acceptor or, in the case of an unaccepted bill, the drawer, or against the maker of a note.

(2) Liability of the transferor under paragraph (1) is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

(3) Where the transferor is liable under paragraph (1), the transferee may recover, even before maturity, the amount paid by him to the transferor, plus interest calculated at the rate of ..., upon return of the instrument.

F. *The guarantor**Article 42*

(1) Payment of an instrument, whether or not it has been accepted, may be guaranteed, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person who may or may not already be a party.

(2) A guarantee must be written on the instrument or on a slip affixed thereto ("*allonge*").

(3) A guarantee is expressed by the words "guaranteed", "*aval*", "good as *aval*" or words of similar import, accompanied by the signature of the guarantor.

(4) A guarantee may be effected by a signature alone. Unless the content otherwise requires:

(a) A signature alone on the front of the instrument, other than that of the drawer or the drawee, is a guarantee;

(b) The signature alone of the drawee on the front of the instrument is an acceptance; and

(c) A signature alone on the back of the instrument other than that of the drawee is an endorsement.

(5) A guarantor may specify the person for whom he has become guarantor. In the absence of such specification, the person for whom he has become guarantor is the acceptor or the drawee in the case of a bill, and the maker in the case of a note.

(6) A guarantor may not raise as a defence to his liability the fact that he signed the instrument before it was signed by the person for whose account he is a guarantor, or while the instrument was incomplete.

Article 43

(1) A guarantor is liable on the instrument to the same extent as the party for whom he has become guarantor, unless the guarantor has stipulated otherwise on the instrument.

(2) If the person for whom he has become guarantor is the drawee, the guarantor undertakes to pay the bill at maturity.

Article 44

The guarantor who pays the instrument has rights thereon against the party for whom he became guarantor and against parties who are liable thereon to that party.

Chapter V. Presentment, dishonour by non-acceptance or non-payment, and recourse

Section 1. Presentment for acceptance and dishonour by non-acceptance

Article 45

(1) A bill may be presented for acceptance.

(2) A bill must be presented for acceptance:

(a) When the drawer has stipulated on the bill that it must be presented for acceptance;

(b) When the bill is drawn payable at a fixed period after sight; or

(c) When the bill is drawn payable elsewhere than at the residence or place of business of the drawee, except where such a bill is payable on demand.

Article 46

(1) The drawer may stipulate on the bill that it must not be presented for acceptance before a specified date

or before the occurrence of a specified event. Except where a bill must be presented for acceptance under article 45(2), the drawer may stipulate that it must not be presented for acceptance.

(2) If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1) and acceptance is refused, the drawer, the endorser, and their guarantors are not liable for dishonour by non-acceptance.

(3) If the drawee accepts a bill notwithstanding a stipulation that it must not be presented for acceptance, the acceptance is effective.

Article 47

A bill is duly presented for acceptance if it is presented in accordance with the following rules:

- (a) The holder must present the bill to the drawee on a business day at a reasonable hour;
- (b) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise;
- (c) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill;
- (d) If a bill is drawn payable on a fixed date, presentment for acceptance must be made before or on the date of maturity;
- (e) A bill drawn payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date;
- (f) A bill in which the drawer has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

Article 48

A necessary or optional presentment for acceptance is dispensed with:

- (a) If the drawee is dead or has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to incur liability on the instrument as an acceptor, or if the drawee is a corporation, partnership, association or other legal entity which has ceased to exist;
- (b) When, with reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance.

Article 49

If a bill which must be presented for acceptance is not so presented, the drawer, the endorsers and their guarantors are not liable on the bill.

Article 50

(1) A bill is considered to be dishonoured by non-acceptance:

- (a) When the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or when the holder cannot obtain the acceptance to which he is entitled under this Convention;
- (b) If presentment for acceptance is dispensed with pursuant to article 48, unless the bill is in fact accepted.

(2) If a bill is dishonoured by non-acceptance the holder may:

- (a) Subject to the provisions of article 55, exercise an immediate right of recourse against the drawer, the endorsers and their guarantors;
- (b) Exercise an immediate right of recourse against the guarantor of the drawee.

Section 2. *Presentment for payment and dishonour by non-payment*

Article 51

An instrument is duly presented for payment if it is presented in accordance with the following rules:

- (a) The holder must present the instrument to the drawee or to the acceptor or to the maker on a business day at a reasonable hour;
- (b) A bill drawn upon or accepted by two or more drawees, or a note signed by two or more makers, may be presented to any one of them, unless the instrument clearly indicates otherwise;
- (c) If the drawee or the acceptor or the maker is dead, presentment must be made to the persons who under the applicable law are his heirs or the persons entitled to administer his estate;
- (d) Presentment for payment may be made to a person or authority other than the drawee, the acceptor or the maker if that person or authority is entitled under the applicable law to pay the instrument;
- (e) An instrument which is not payable on demand must be presented for payment on the date of maturity or on the business day which follows;
- (f) An instrument which is payable on demand must be presented for payment within one year of its date;
- (g) An instrument must be presented for payment:
 - (i) At the place of payment specified on the instrument; or
 - (ii) If no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated on the instrument; or

(iii) If no place of payment is specified and the address of the drawee or the acceptor or the maker is not indicated, at the principal place of business or habitual residence of the drawee or the acceptor or the maker;

(h) An instrument which is presented at a clearing-house is duly presented for payment if the law of the place where the clearing-house is located or the rules or customs of that clearing-house so provide.

Article 52

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with:

(a) If the drawer, an endorser or guarantor has expressly waived presentment; such waiver:

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;

(b) If an instrument is not payable on demand, and the cause of delay in making presentment continues to operate beyond 30 days after maturity;

(c) If an instrument is not payable on demand, and the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(d) If the drawee, the maker or the acceptor has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to make payment, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist;

(e) If there is no place at which the instrument must be presented in accordance with article 51(g).

(3) Presentment for payment is also dispensed with as regards a bill, if the bill has been protested for dishonour by non-acceptance.

Article 53

(1) If a bill is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable thereon.

(2) If a note is not duly presented for payment, the endorsers and their guarantors are not liable thereon.

(3) Failure to present an instrument for payment does not discharge the acceptor or the maker or their guarantors or the guarantor of the drawee of liability thereon.

Article 54

(1) An instrument is considered to be dishonoured by non-payment:

(a) When payment is refused upon due presentment or when the holder cannot obtain the payment to which he is entitled under this Convention;

(b) If presentment for payment is dispensed with pursuant to article 52(2) and the instrument is unpaid at maturity.

(2) If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 55, exercise a right of recourse against the drawer, the endorsers and their guarantors.

(3) If a note is dishonoured by non-payment, the holder may, subject to the provisions of article 55, exercise a right of recourse against the endorsers and their guarantors.

Section 3. Recourse

A. Protest

Article 55

If an instrument has been dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles 56 to 58.

Article 56

(1) A protest is a statement of dishonour drawn up at the place where the instrument has been dishonoured and signed and dated by a person authorized in that respect by the law of that place. The statement must specify:

(a) The person at whose request the instrument is protested;

(b) The place of protest; and

(c) The demand made and the answer given, if any, or the fact that the drawee or the acceptor or the maker could not be found.

(2) A protest may be made:

(a) On the instrument itself or on a slip affixed thereto ("allonge"); or

(b) As a separate document, in which case it must clearly identify the instrument that has been dishonoured.

(3) Unless the instrument stipulates that protest must be made, a protest may be replaced by a declaration written

on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person; the declaration must be to the effect that acceptance or payment is refused.

(4) A declaration made in accordance with paragraph (3) is deemed to be a protest for the purpose of this Convention.

Article 57

(1) Protest for dishonour of a bill by non-acceptance must be made on the day on which the bill is dishonoured or on one of the two business days which follow.

(2) Protest for dishonour of an instrument by non-payment must be made on the day on which the instrument is dishonoured or on one of the two business days which follow.

Article 58

(1) Delay in protesting an instrument for dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, protest must be made with reasonable diligence.

(2) Protest for dishonour by non-acceptance or by non-payment is dispensed with:

(a) If the drawer, an endorser or guarantor has expressly waived protest; such waiver:

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;

(b) If the cause of delay under paragraph (1) in making protest continues to operate beyond 30 days after the date of dishonour;

(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person;

(d) If presentment for acceptance or for payment is dispensed with in accordance with article 48 or 52(2).

Article 59

(1) If a bill which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors are not liable thereon.

(2) If a note which must be protested for non-payment is not duly protested, the endorsers and their guarantors are not liable thereon.

(3) Failure to protest an instrument does not discharge the acceptor or the maker or their guarantors or the guarantor of the drawee of liability thereon.

B. Notice of dishonour

Article 60

(1) The holder, upon dishonour of a bill by non-acceptance or by non-payment, must give notice of such dishonour to the drawer, the endorsers and their guarantors.

(2) The holder, upon dishonour of a note by non-payment, must give notice of such dishonour to the endorsers and their guarantors.

(3) An endorser or a guarantor who receives notice must give notice of dishonour to the party immediately preceding him and liable on the instrument.

(4) Notice of dishonour operates for the benefit of any party who has a right of recourse on the instrument against the party notified.

Article 61

(1) Notice of dishonour may be given in any form whatever and in any terms which identify the instrument and state that it has been dishonoured. The return of the dishonoured instrument is sufficient notice, provided it is accompanied by a statement indicating that it has been dishonoured.

(2) Notice of dishonour is duly given if it is communicated or sent to the party to be notified by means appropriate in the circumstances, whether or not it is received by that party.

(3) The burden of proving that notice has been duly given rests upon the person who is required to give such notice.

Article 62

Notice of dishonour must be given within the two business days which follow:

(a) The day of protest or, if protest is dispensed with, the day of dishonour; or

(b) The receipt of notice given by another party.

Article 63

(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with:

(a) If after the exercise of reasonable diligence notice cannot be given;

(b) If the drawer, an endorser or guarantor has expressly waived notice of dishonour; such waiver:

- (i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;
- (ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;
- (iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;

(c) As regards the drawer of the bill, if the drawer and the drawee or the acceptor are the same person.

Article 64

Failure to give notice of dishonour renders a person who is required to give such notice under article 60 to a party who is entitled to receive such notice liable for any damages which that party may suffer from such failure, provided that such damages do not exceed the amount referred to in article 66 or 67.

Section 4. Amount payable

Article 65

The holder may exercise his rights on the instrument against any one party, or several or all parties, liable thereon and is not obliged to observe the order in which the parties have become bound.

Article 66

(1) The holder may recover from any party liable:

- (a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;
- (b) After maturity:
 - (i) The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;
 - (ii) If interest has been stipulated to be paid after maturity, interest at the rate stipulated, or in the absence of such stipulation, interest at the rate specified in paragraph (2), calculated from the date of presentment on the sum specified in paragraph (1)(b)(i);
 - (iii) Any expenses of protest and of the notices given by him;
- (c) Before maturity:
 - (i) The amount of the bill with interest, if interest has been stipulated for, to the date of payment, subject to a discount from the date of payment to the date of maturity, calculated in accordance with paragraph (3);

(ii) Any expenses of protest and of the notices given by him.

(2) The rate of interest shall be [2] per cent per annum above the official rate (bank rate) or other similar appropriate rate effective in the main centre of the country where the instrument is payable. If there is no such rate, the rate of interest shall be [2] per cent per annum above the official rate (bank rate) or other similar appropriate rate effective in the main centre of the country in the currency of which the instrument is payable. In the absence of any such rates, the rate of interest shall be [] per cent per annum.

(3) The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or if he does not have a place of business his habitual residence, or if there is no such rate then at the rate of [] per cent per annum.

Article 67

A party who pays an instrument in accordance with article 66 may recover from the parties liable to him:

- (a) The entire sum which he was obliged to pay in accordance with article 66 and has paid;
- (b) Interest on that sum at the rate specified in article 66, paragraph (2), from the date on which he made payment;
- (c) Any expenses of the notices given by him.

Chapter VI. Discharge

Section 1. Discharge by payment

Article 68

(1) A party is discharged of liability on the instrument when he pays the holder, or a party subsequent to himself who has paid the instrument and is in possession thereof, the amount due pursuant to article 66 or 67:

- (a) At or after maturity; or
- (b) Before maturity, upon dishonour by non-acceptance.

(2) Payment before maturity other than under paragraph (1)(b) of this article does not discharge the party making the payment of his liability on the instrument except in respect of the person to whom payment was made.

(3) A party is not discharged of liability if he pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid claim to the instrument or that the holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery.

(4) (a) A person receiving payment of an instrument must, unless agreed otherwise, deliver:

- (i) To the drawee making such payment, the instrument;
- (ii) To any other person making such payment, the instrument, a receipted account, and any protest.

(a *bis*) In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

(b) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by non-payment under article 54.

(c) If payment is made but the person paying, other than the drawee, fails to obtain the instrument, such person is discharged but the discharge cannot be set up as a defence against a protected holder.

Article 69

- (1) The holder is not obliged to take partial payment.
- (2) If the holder who is offered partial payment does not take it, the instrument is dishonoured by non-payment.
- (3) If the holder takes partial payment from the drawee or the acceptor or the maker:

(a) The acceptor or the maker is discharged of his liability on the instrument to the extent of the amount paid; and

(b) The instrument is to be considered as dishonoured by non-payment as to the amount unpaid.

- (4) If the holder takes partial payment from a party to the instrument other than the drawee, the acceptor or the maker:

(a) The party making payment is discharged of his liability on the instrument to the extent of the amount paid; and

(b) The holder must give such party a certified copy of the instrument and of any authenticated protest.

- (5) The drawee or a party making partial payment may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

- (6) If the balance is paid, the person who receives it and who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest.

Article 70

(1) The holder may refuse to take payment in a place other than the place where the instrument was presented for payment in accordance with article 51.

(2) If in such case payment is not made in the place where the instrument was presented for payment in accordance with article 51, the instrument is considered as dishonoured by non-payment.

Article 71

(1) An instrument must be paid in the currency in which the amount of the instrument is expressed.

(1 *bis*) When the amount of an instrument is expressed in a monetary unit of account within the meaning of article 4(11) and does not specify a currency of payment, the instrument is to be paid in the currency of the place of payment. However, this provision does not apply if, between the person making the payment and the person receiving it, the unit of account is transferable.

(2) The drawer or the maker may indicate on the instrument that it must be paid in a specified currency other than the currency in which the amount of the instrument is expressed. In that case:

(a) The instrument must be paid in the currency so specified;

(b) The amount payable is to be calculated according to the rate of exchange indicated on the instrument. Failing such indication, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of maturity:

(i) Ruling at the place where the instrument must be presented for payment in accordance with article 51(g), if the specified currency is that of that place (local currency); or

(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with article 51(g);

(c) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated:

(i) If the rate of exchange is indicated on the instrument, according to that rate;

(ii) If no rate of exchange is indicated on the instrument, at the option of the holder, according to the rate of exchange ruling on the date of dishonour or on the date of actual payment;

(d) If such an instrument is dishonoured by non-payment, the amount payable is to be calculated:

(i) If the rate of exchange is indicated on the instrument, according to that rate;

(ii) If no rate of exchange is indicated on the instrument, at the option of the holder, according to the rate of exchange ruling on the date of maturity or on the date of actual payment.

(3) Nothing in this article prevents a court from awarding damages for loss caused to the holder by reason of fluctuations in rates of exchange if such loss is caused by dishonour for non-acceptance or non-payment.

(4) The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with article 51(g) or at the place of actual payment.

Article 72

(1) Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory, including regulations which it is bound to apply by virtue of international agreements to which it is a party.

(2) (a) If, by virtue of the application of paragraph (1) of this article, an instrument drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of presentment ruling at the place where the instrument must be presented for payment in accordance with article 51(g).

(b) (i) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated, at the option of the holder, at the rate of exchange ruling on the date of dishonour, or on the date of actual payment.

(ii) If such an instrument is dishonoured by non-payment, the amount is to be calculated, at the option of the holder, according to the rate of exchange ruling on the date of presentment or on the date of actual payment.

(iii) Paragraphs (3) and (4) of article 71 are applicable where appropriate.

Section 2. Discharge of a prior party

Article 73

(1) When a party is discharged wholly or partly of his liability on the instrument, any party who has a right of recourse against him is discharged to the same extent.

(2) Payment by the drawee of the whole or a part of the amount of a bill to the holder, or to any party who has paid the bill in accordance with article 66, discharges all parties of their liability to the same extent.

Chapter VII. Lost Instruments

Article 74

(1) When an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraph (2) of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession thereof.

(2) (a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:

(i) The elements of the lost instrument pertaining to the requirements set forth in article 1(2) or 1(3); for this purpose the person claiming payment of the lost instrument may present to that party a copy of that instrument;

(ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;

(iii) The facts which prevent production of the instrument.

(b) The party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

(c) The nature of the security and its terms are to be determined by agreement between the person claiming payment and the party from whom payment is claimed. Failing such an agreement, the court may determine whether security is called for and, if so, the nature of the security and its terms.

(d) If the security cannot be given, the court may order the party from whom payment is claimed to deposit the amount of the lost instrument, and any interest and expenses which may be claimed under article 66 or 67, with the court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

Article 75

(1) A party who has paid a lost instrument and to whom the instrument is subsequently presented for payment by another person must notify the person to whom he paid of such presentment.

(2) Such notification must be given on the day the instrument is presented or on one of the two business days which follow and must state the name of the person presenting the instrument and the date and place of presentment.

(3) Failure to notify renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the damages do not exceed the amount referred to in article 66 or 67.

(4) Delay in giving notice is excused when the delay is caused by circumstances which are beyond the control of the person who has paid the lost instrument and which he could neither avoid nor overcome. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(5) Notice is dispensed with when the cause of delay in giving notice continues to operate beyond 30 days after the last date on which it should have been given.

Article 76

(1) A party who has paid a lost instrument in accordance with the provisions of article 74 and who is subsequently required to, and does, pay the instrument, or who, by reason of the loss of the instrument, then loses his right to recover from any party liable to him, has the right:

- (a) If security was given, to realize the security; or
- (b) If the amount was deposited with the court or other competent authority or institution, to reclaim the amount so deposited.

(2) The person who has given security in accordance with the provisions of paragraph (2)(b) of article 74 is entitled to obtain release of the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost.

Article 77

A person claiming payment of a lost instrument duly effects protest for dishonour by non-payment by the use of a written statement that satisfies the requirements of article 74, paragraph (2)(a).

Article 78

A person receiving payment of a lost instrument in accordance with article 74 must deliver to the party paying the written statement required under article 74, paragraph (2)(a), receipted by him and any protest and a receipted account.

Article 79

(1) A party who has paid a lost instrument in accordance with article 74 has the same rights which he would have had if he had been in possession of the instrument.

(2) Such party may exercise his rights only if he is in possession of the receipted written statement referred to in article 78.

Chapter VIII. Limitation (prescription)

Article 80

(1) A right of action arising on an instrument may no longer be exercised after four years have elapsed:

- (a) Against the maker, or his guarantor, of a note payable on demand, from the date of the note;
- (b) Against the acceptor or the maker or their guarantor of an instrument payable at a definite time, from the date of maturity;
- (c) Against the acceptor of a bill payable on demand, from the date on which it was accepted;
- (d) Against the drawer or an endorser or their guarantor, from the date of protest for dishonour by non-acceptance or non-payment or, where protest is dispensed with, from the date of dishonour.

(2) If a party has paid the instrument in accordance with article 66 or 67 within one year before the expiration of the period referred to in paragraph (1) of this article, such party may exercise his right of action against a party liable to him within one year from the date on which he paid the instrument.

3. Working paper submitted to the Working Group on International Negotiable Instruments at its fourteenth session – draft Convention on International Bills of Exchange and International Promissory Notes: some considerations and suggestions relating to major controversial issues: note by the secretariat (A/CN.9/WG.IV/WP.30) [Original: English]

1. The Working Group, at its thirteenth session,¹ considered the major controversial issues, namely the concept of holder and protected holder, the effect of forged endorsements and the liability of the transferor by mere delivery or by endorsement. In this connection, it requested the secretariat to consider or study certain questions relating to the major controversial issues and to

draft or re-draft pertinent provisions.² This note has been prepared pursuant to that request.

A. Defences available against holder or protected holder; definition of protected holder (A/CN.9/261, paras. 23–26)

1. Article 26(1)(b)

2. The following modification of article 26(1)(b) is suggested:

¹Report of the Working Group on International Negotiable Instruments on the work of its thirteenth session (New York, 7–18 January 1985), A/CN.9/261.

²A/CN.9/261, paras. 26, 39, 48, 59, 63 and 67.