fees for executing the payment order, but those fees are the responsibility of the beneficiary and do not affect the originator of the funds transfer or the discharge of the obligation. Determination of the time the beneficiary's bank owes the beneficiary also determines the time when the funds would be subject to legal process against the assets of the beneficiary.

8. Paragraph (4) is concerned with a difficult problem when funds transfers pass through several banks. The originator is responsible for all charges up to the beneficiary's bank. So long as those charges are passed back to the originator, there are no difficulties. When this is not easily done, a bank may deduct its charges from the amount of the funds transferred. Since it may be impossible for an originator to know whether such charges will be deducted or how much they may be, especially in an international funds transfer, it cannot provide for this eventuality. Therefore, paragraph (4) provides that the obligation is discharged by the amount of the charges that have been deducted as well as by the amount received by the beneficiary's bank; the originator would not be in breach of contract for late or inadequate payment. Nevertheless, it would be obligated to reimburse the beneficiary for those charges.

9. Paragraph (5) is the corollary to paragraph (3) in that it gives the rule as to when the account of a sender, including but not limited to the originator, is to be considered debited, and the amount owed by the bank to the sender reduced or the amount owed by the sender to the bank increased. That point of time is when the sender can no longer revoke or amend the payment order under article 9. It may be before or after the bookkeeping operation of debiting the account is accomplished. Paragraph (5) may have its most important application in determining whether credit is still available in the account holder's account against which there might be legal process. In the usual situation for a receiving bank that is not the beneficiary's bank that point of time is when it executes the payment order by sending a new payment order to the next bank.

C. Report of the Working Group on International Payments on the work of its eighteenth session (Vienna, 5-16 December 1988) (A/CN.9/318) [Original: English]

CONTENTS

	Paragraphs
INTRODUCTION	1-8
CONSIDERATION OF DRAFT PROVISIONS FOR MODEL RULES ON ELECTRONIC FUNDS TRANSFERS	9-161
Title of Model Rules	10-19
Article 1. Scope of application	20-34
Article 2. Definitions	35-59
Article 3. Interpretation of data elements	60-69
Article 4. Obligations of sender	70-109
Article 5(1). Obligations of receiving bank	110-125
Article 6. Acceptance of a payment order	126-143
Article 5(2)-(4). Obligations of receiving bank	144-161
FUTURE SESSIONS	162
	Page
ANNEX	85

INTRODUCTION

1. At its nineteenth session, in 1986, the Commission decided to begin the preparation of Model Rules on electronic funds transfers and to entrust that task to the Working Group on International Negotiable Instruments, which it renamed the Working Group on International Payments.[1]

[1]See *Official Records of the General Assembly, Forty-first Session, Supplement No. 17* (A/41/17), para. 230.

2. The Working Group undertook the task at its sixteenth session (Vienna, 2 to 13 November 1987), at which it considered a number of legal issues set forth in a note of the Secretariat (A/CN.9/WG.IV/WP.35). The Group requested the Secretariat to prepare draft provisions based on the discussions during its sixteenth session for consideration at its seventeenth session (A/CN.9/297). At its seventeenth session (New York, 5 to 15 July 1988) the Working Group considered draft provisions prepared by the Secretariat as submitted in document A/CN.9/WG.IV/WP.37. At the close of its discussions the Working Group

requested the Secretariat to prepare a revised draft of the Model Rules taking into account the considerations and the decisions of the Group (A/CN.9/317, para. 10).

3. The Working Group held its eighteenth session in Vienna from 5 to 16 December 1988. The Group is composed of all States members of the Commission. The session was attended by representatives of the following States members: Argentina, Australia, Austria, China, Czechoslovakia, Egypt, France, German Democratic Republic, Hungary, India, Iraq, Italy, Japan, Mexico, Netherlands, Nigeria, Spain, Sweden, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

4. The session was attended by observers from the following States: Bulgaria, Canada, Finland, Germany, Federal Republic of, Indonesia, Israel, Kuwait, Philippines, Poland, Qatar, Republic of Korea, Saudi Arabia, Switzerland and Thailand.

5. The session was attended by observers from the following international organizations: International Monetary Fund, Bank for International Settlements, Commission of European Communities, Hague Conference on Private International Law, Banking Federation of the European Community, and Latin American Federation of Banks.

6. The Working Group elected the following officers:

Chairman: Mr. José María Abascal Zamora (Mexico)

Rapporteur: Ms. Veronique Ingram (Australia).

7. The following documents were placed before the Working Group:

(*a*) Provisional agenda (A/CN.9/WG.IV/WP.38)

(*b*) Draft Model Rules on electronic funds transfers: report of the Secretary-General (A/CN.9/WG.IV/WP.39).

8. The Working Group adopted the following agenda:

(*a*) Election of officers

(*b*) Adoption of the agenda

(*c*) Preparation of Model Rules on electronic funds transfers

(*d*) Other business

(*e*) Adoption of the report.

CONSIDERATION OF DRAFT PROVISIONS FOR MODEL RULES ON ELECTRONIC FUNDS TRANSFERS

9. The Working Group decided to commence its work at the current session by considering the draft provisions as revised by the Secretariat and submitted in A/CN.9/WG.IV/WP.39. The draft provisions as revised by the Working Group, together with those provisions submitted by the Secretariat that were not considered by the Working Group, are to be found in the annex to this report.

Title of Model Rules

10. The title of the Model Rules as considered by the Working Group was as follows:

"Draft Provisions for Model Rules
on Credit Transfers".

11. The Working Group recalled that at its seventeenth session it had decided to proceed under the working assumption that the outcome of the work would be model legislation (A/CN.9/317, para. 25). It was suggested that the continuing use of the term model rules suggested that the text might be addressed to private individuals for their adoption to govern their individual relationships, whereas it was intended that the text should be addressed to legislative bodies for adoption as statutory law.

12. The view was expressed that the text should be prepared in the form of a model law and not in the form of a convention. It was suggested that a higher degree of agreement on appropriate solutions would have to be found to prepare a convention than to prepare a model law. A model law could be more flexible than a convention because States could take those parts of it that they found useful and could adapt it to their needs. Under another view it was too early to decide on the final legal form of the text to be developed. After deliberation the Working Group decided that the text should not for the time being be in the form of a convention.

13. The Working Group decided to use the words "Model Law" in the title to reflect the fact that the text was for use by national legislators.

14. The question was raised whether it was appropriate to have changed the title from Model Rules on Electronic Funds Transfers to Model Rules on Credit Transfers. The Working Group was in agreement that the change in the title from "funds transfers" to "credit transfers" correctly reflected the decision of the Working Group at its seventeenth session to exclude debit transfers, at least for the time being, from the scope of the Model Law (A/CN.9/317, para. 17). It was noted that a similar change had been made to most of the references to "funds transfer" in the draft provisions and it was decided that the term "credit transfer" should be used consistently.

15. It was suggested, however, that the word "electronic" should continue to be used in the title of the Model Law. In support of this view it was pointed out that the mandate given to the Working Group by the Commission was to prepare rules on electronic funds transfers. In further support it was stated that the Model Law should be restricted to credit transfers carried out by electronic means. Under one suggestion the Model Law would apply only to those segments of the credit transfer carried out by electronic means. Moreover, it was suggested, the purpose of the preparation of the Model Law would be to regulate those legal issues where the rules developed in the context of paper-based credit transfers that should be changed as a result of the use of electronics. It was stated that it was neither necessary nor desirable to contemplate preparing a Model Law for paper-based credit transfers, since they were already well provided for under national law.

16. In reply it was stated that few countries had statutory rules governing paper-based credit transfers. It would be difficult to ask a legislature to adopt a law of exception to otherwise existing law when the existing law did not exist in statutory form. Furthermore, since most of the legal issues were the same whether a payment order was in paper or electronic form, it would be possible to have a single set of rules to govern all credit transfers, with such special rules for paper or electronic payment orders as seemed appropriate. This was said to be particularly important because a single credit transfer might include one or more payment orders in electronic form and one or more payment orders in paper-based form.

17. After deliberation the Working Group decided not to include the word "electronic" in the title of the Model Law or in the provision on the scope of application.

18. The Working Group decided to include the word "international" in the title, and to include a test of internationality in article 1.

19. As a result the Working Group agreed that the title should be "draft Model Law on International Credit Transfers".

Article 1. *Scope of application*

20. The text of article 1 as considered by the Working Group was as follows:

> "(1) These rules apply to credit transfers [where the originator's bank and the beneficiary's bank are in different countries or where the originator's bank and the beneficiary's bank are in the same country, but the currency in which the funds transfer is denominated is not the currency of that country].
>
> "(2) A State may adopt supplementary legislation dealing with the rights and obligations of [consumers] [originators and beneficiaries]."

Paragraph (1)

21. The Working Group considered the test of internationality that should be applied for the Model Law to attach to a credit transfer. It was noted that the second of the two tests set forth in the draft article provided that a credit transfer would be international, even though the originator's bank and the beneficiary's bank were in the same country, if the currency in which the credit transfer was denominated was that of a different country. The Working Group was in agreement that this test of internationality should not be retained. It was suggested that those cases in which the transfer would be implemented by payment orders to a bank in the country of the currency involved would probably fall automatically under the test of internationality that would be finally adopted, even though they would not fall under the other test of internationality in the current draft. However, where the same bank served both as originator's bank and as beneficiary's bank or where the two banks in the same country could settle the foreign currency transfer within that country, as was increasingly frequent, there was no reason to consider the transfer as being international.

22. The Working Group noted that the principal test of internationality was that the originator's bank and the beneficiary's bank were not in the same country. In that context it was noted that a branch of a bank was to be treated as a separate bank. Therefore, credit transfers between two branches of the same bank in different countries would fall under the Model Law. (See paragraphs 53-54 and 107-109, below, for further discussion of a branch as a separate bank.)

23. The discussion focussed on the situation where the originator resident in country A sent a payment order to a bank in country B to make a credit transfer to the beneficiary at the same or a different bank in country B. It was noted that under the current text this would not be an international credit transfer and would not be governed by the Model Law.

24. It was suggested that such a credit transfer should be considered to be international. Under one view the fact that the originator was in a foreign country should be the essential test. A somewhat similar suggestion was that a credit transfer should be international if a payment order was sent from one country to another. It was stated that the current text determined the internationality of a credit transfer by whether a second payment order, the one sent from originator's bank to beneficiary's bank, was sent from one country to another; it was illogical for the test of internationality to exclude the first payment order.

25. To further illustrate the point it was suggested that instead of reimbursing the originator's bank in country B by instructing it to debit the originator's account, the originator might have requested another bank in country A to instruct the bank in country B to make the credit transfer. In such a case the credit transfer would be governed by the Model Law.

26. Under yet another variant of the example the originator in country A would send a payment order to the bank in country B instructing the bank to make the credit transfer in country B and would inform the bank that it would have funds sent from country A to cover the payment order. Some hours later it would send a payment order to its bank in country A to send sufficient funds to the bank in country B to provide funds to enable the first payment order to be effected. It was stated that in this latter case it was clear that the credit transfer to reimburse the bank in country B would fall under the Model Law; however, it was not clear whether the entire transaction was brought under the Model Law or whether there should be considered to be two separate credit transfers of which one was international and the other was not.

27. In favour of retaining the current test it was stated that relying on whether the payment order from the originator was sent from one country to another would mean that the Model Law would apply to credit transfers that were otherwise completely domestic if the originator happened to be outside his home country when he sent the payment order.

28. In respect of the different variants of the fact situation that had been discussed it was stated that it was

natural that the same underlying economic transaction might be subject to different laws if the transaction was structured in different ways.

29. After discussion the Working Group decided to keep the first test of internationality. Consequently, the text of article 1(1) as adopted by the Working Group was:

"This law applies to credit transfers where the originator's bank and the beneficiary's bank are in different countries."

Paragraph (2)

30. The Working Group considered whether paragraph (2) should be retained. Under one view it was unnecessary since the nature of a model law was that each State could adopt such portions of the text that it wished and modify them in any way it considered desirable. The text of paragraph (2) as proposed was stated to be inappropriate because a model law should be addressed to the parties to the transactions and not to the States themselves. Such a provision was particularly inappropriate in this text, since the Model Law might be considered for adoption by many States that did not have consumer protection legislation. If it was desirable to retain the message that a State might adopt other or additional rules to protect consumers, it was suggested that the message should be outside the text of the Model Law itself.

31. Under another view paragraph (2) served a useful function and should be retained. Under that view national legislation on funds transfers often contained express provisions either subordinating, or giving priority to, other types of legislation, existing or future; article 1(2) would provide that type of provision for the Model Law. Under yet another view, while it was true that paragraph (2) was not a necessary provision from a legal point of view, the alternative might be the complete exclusion of consumer credit transfers from the scope of application of the Model Law. Not only would the inclusion of paragraph (2) in the Model Law help to retain the basic uniformity of the law governing credit transfers, it would avoid the difficult task of defining consumer credit transfers. Such a definition would have to be undertaken if consumer credit transfers were to be excluded from the scope of application of the Model Law. At the same time the inclusion of paragraph (2) would make it clear that States were free to adopt different and higher standards of protection for those bank customers who were consumers as defined by the local law. It was suggested that in this way the Model Law might serve an educational function in regard to consumer protection. It was also suggested that retention of the provision would have a psychological effect in some States that would make the Model Law more acceptable.

32. As to the content of the provision, a question was raised whether supplementary legislation could be in contradiction with the basic rules in the Model Law. It was decided not to restrict potential consumer legislation in this manner and to delete the word "supplementary" from the text. It was also suggested that any reference to originators and beneficiaries should be deleted. On the one hand such a reference might suggest that the Model Law was dealing with the underlying transaction and not only the credit transfer. On the other hand any questions relating to the account relationship of the originator and beneficiary with their banks was a matter for local law.

33. A new formulation of paragraph (2) was suggested as follows:

"This law is subject to any national legislation dealing with the rights and obligations of consumers."

It was decided to retain this formulation but to place it in a footnote to article 1. In that manner the message would remain attached to the text of the Model Law and would not become lost, as might a similar statement in a commentary or in the resolution by which the Model Law was adopted by the Commission, but it would not be a part of the Model Law itself.

34. It was decided that the question as to the extent to which the provisions of the Model Law would be subject to the contrary agreement of the interested parties would be considered in connection with the individual provisions.

Article 2. *Definitions*

35. The text of the definitions in subparagraphs *(a)* to *(f)* and *(h)* was considered by the Working Group, after which it decided to consider the remaining definitions as they arose in connection with the substantive articles in which they occurred. It was noted that in several of the definitions the word "party" should be replaced by "person", as had been suggested at the previous session of the Working Group but had been overlooked in the redrafting. The text of subparagraph *(a)* as considered by the Working Group was as follows:

"*(a)* 'Credit transfer' means a complete movement of funds from the originator to the beneficiary. A credit transfer may consist of one or more segments."

36. The suggestion was made to add to the end of the first sentence the words "pursuant to a payment order received by the originator's bank directly from the originator" as a means of clarifying the difference between a credit transfer and a debit transfer. Although a question was raised as to whether the proposed addition would make the definition clearer, there was general agreement that it would be helpful. Nevertheless, because there was a concern that the word "directly" might exclude some types of transfers that should be considered to be credit transfers, it was decided to place the word in square brackets.

37. Under one suggestion the second sentence should be deleted as referring only to banking procedure. Under another suggestion that received general support the sentence should state that the credit transfer might involve one or more payment orders rather than one or more segments. It was also suggested that a distinction should be made between the originator's payment order and the execution of that order. Later in the session concern was expressed about the use of the term "complete movement".

38. As a result the text of subparagraph *(a)* as approved by the Working Group was as follows:

"*(a)* 'Credit transfer' means a complete movement of funds from the originator to the beneficiary pursuant to a payment order received by the originator's bank [directly] from the originator. A credit transfer may involve one or more payment orders."

39. The text of subparagraphs *(b)* and *(c)* as considered by the Working Group was as follows:

"*(b)* 'Originator' means the issuer of the first payment order in a credit transfer.

"*(c)* 'Beneficiary' means the ultimate party to be credited or paid as a result of a credit transfer."

40. It was noted that a bank would be included as an originator or a beneficiary if it otherwise met the definition. As an alternative to the current definition, a bank that was the issuer of the first payment order might be considered to be the "originator's bank" and similarly a bank that was the ultimate party to be credited might be considered to be the "beneficiary's bank". The Working Group noted that the significance of such a change in the definitions could be determined only by a review of the substantive provisions of the Model Law as they might eventually be adopted.

41. A suggestion was made to replace the word "issuer" by the word "sender" in the definition of "originator". Under another suggestion the word "issuer" should be used in place of "sender" throughout the Model Law. The Working Group adopted the text of subparagraph *(b)*.

42. There was general agreement to replace the words "to be credited or paid" in the definition of beneficiary by "intended to receive the funds" as a means of making it clearer that a person whose account was credited in error was not a beneficiary. Consequently the text of subparagraph *(c)* as adopted by the Working Group was as follows:

"*(c)* 'Beneficiary' means the ultimate person intended to receive the funds as a result of a credit transfer."

43. The text of subparagraph *(d)* as considered by the Working Group was as follows:

"*(d)* 'Sender' means the party who sends a payment order [including the originator and any sending bank]."

44. Under one view the definition of a sender should be restricted to a sending bank and should exclude a non-bank originator. This was stated to be of particular importance in respect of article 4 on the duties of a sender and article 9 on the liabilities of a receiving bank. Under the prevailing view, it was of particular importance that all senders, including non-bank originators, should have the obligations of article 4. Consequently, it was decided to keep the words but to delete the square brackets at the end of the sentence.

45. The text of subparagraph *(e)* as considered by the Working Group was as follows:

"*(e)* 'Bank' means a financial institution which, as an ordinary part of its business, engages in credit transfers for other parties. For the purposes of these Rules a branch of a bank is considered to be a separate bank."

46. It was agreed that the word "bank" was a convenient word to use in the Model Law since it was short, well-known and covered the core concept of what was intended. It was recognized, however, that any definition in the Model Law would deviate from the definition used in national legislation. It was also noted that in some countries there was more than one legal definition of bank for different purposes.

47. It was noted that the definition of a "bank" would have an effect on the scope of application of the Model Law, since under article 1 as revised the originator's bank and the beneficiary's bank had to be in different countries for the Model Law to apply.

48. There was strong support for a broad definition of "bank". As one means of achieving that result, it was suggested that the word "financial" might be deleted. It was also stated that it was not clear what was the full range of institutions that were encompassed within the term financial institutions.

49. In opposition to deleting the word "financial" it was stated that the term "financial institution" was used in the United Nations Convention on International Bills of Exchange and International Promissory Notes, article 47(4), relating to the giving of a guarantee, without being defined. Furthermore, while the term might not be totally clear, it did serve the purpose of distinguishing between an enterprise whose function was the furnishing of financial services from an enterprise whose function was the furnishing of services in relation to real goods, such as an agency for a seller of goods, that might engage in credit transfers for its principal as one of those services.

50. It was suggested that only deposit taking institutions should be characterized as banks in the Model Law. This would serve to exclude from the Model Law the credit transfers made by some post offices and private enterprises that made credit transfers for others only by taking and paying cash rather than by debiting or crediting the accounts of the originators and beneficiaries. Such a definition would also affect transfers made by or to non-depositary financial institutions, such as dealers in securities, which could debit or credit accounts of their customers. Such a restrictive definition would exclude some transfers made by those institutions from the scope of application of the Model Law; in other cases when a customer of the institution had directed that a transfer be made, a restrictive definition would change the status of the institution from, for example, originator's bank to originator and the rights of its customer would be determined by some law other than the Model Law. In opposition to the suggestion, it was stated that requiring that the financial institution be a deposit taker to qualify as a bank under the Model Law would restrict the application of the Model Law unduly.

51. A suggestion that received strong support, but that was not adopted, was that the end of the first sentence should read that the institution "as an ordinary part of its business, sends and executes payment orders for others". Another suggestion was that a bank should be an institution "engaged in the business of banking".

52. After extensive discussion the Working Group decided to retain the first sentence unchanged.

53. In respect of the second sentence, it was stated that not all branches should be treated as separate banks under the Model Law, especially where some or all of the branches were on-line and could access the same data bases. In order to decide the appropriateness of a rule that all branches should be considered to be separate banks, it would be necessary to examine each of the substantive rules of the Model Law and make the decision separately for each of them.

54. After discussion the Working Group decided to delete the second sentence from the definition of "bank", to consider in regard to the individual substantive articles whether branches should be treated as banks, and to add to article 1 a new paragraph as follows:

"For the purpose of determining the sphere of application of this Law, branches of banks in different countries are considered to be separate banks."

55. The text of subparagraph *(f)* as considered by the Working Group was as follows:

"*(f)* 'Receiving bank' means the bank to which a payment order is delivered."

56. Under one view a receiving bank should be the bank to which a payment order was addressed, but that was opposed by those who noted that the term would thereby include a bank to which a payment order was addressed but which did not receive it. Under another view a receiving bank should be a bank that received a payment order, but that was opposed by those who noted that the term would thereby exclude from the definition a bank to which a payment order was addressed even though the payment order did not arrive while including in the definition a bank that received a payment order that was not addressed to it. Under yet another view a receiving bank should be restricted to a bank that received a payment order addressed to it.

57. The Working Group decided that a receiving bank should be a bank that received a payment order, and that the responsibility of a bank that received a payment order not intended for it would be discussed in the context of article 5. (See paragraphs 119 and 121 to 125, below.) Consequently the text of subparagraph *(f)* as adopted by the Working Group was as follows:

"*(f)* A 'receiving bank' is a bank that receives a payment order."

58. The text of subparagraph *(h)* as considered by the Working Group was as follows:

"*(h)* 'Funds' or 'money' includes credit in an account kept by a bank. The credit may be denominated in any national currency or in a monetary unit of account that is established by an intergovernmental institution or by agreement of two or more States, provided that these Rules shall apply without prejudice to the rules of the intergovernmental institution or the stipulations of the agreement."

59. The question was raised whether the definition was sufficient to cover the ECU as it was currently used in private transactions, since the ECU had taken on a quality of being something more than a unit of account. In response it was noted that the definition was modelled on the definition contained in the United Nations Convention on International Bills of Exchange and International Promissory Notes and that the Commission had adopted the definition with the private use, *inter alia,* of the ECU in mind.

Article 3. *Interpretation of data elements*

60. It was stated that the two alternative provisions placed before the Working Group in A/CN.9/WG.IV/WP.39 did not adequately address the kinds of problems that arose in practice. It was stated that the problems to be resolved could be divided into discrepancies in the representation of data by words and by figures that arose at the time of origination of a payment order and those that arose during transmission. The discrepancies occurring at origination or during transmission might be in respect of the amount of the payment order or in respect of the designation of the beneficiary where the name of the beneficiary did not correspond with the account number.

61. It was stated that discrepancies in amount arose only at the origination of credit transfers and not during transmission because interbank electronic funds transfers transmitted the amount only in figures. Those figures might be changed by error or fraud during the transmission, but there would be no discrepancy between two different representations of the amount in the payment order as received. In contrast, the beneficiary was often represented both by name and by the account to be credited. It was stated that discrepancies between the two representations that arose during transmission often were the result of the fraud of a third party.

62. It was suggested that the differences in the various types of problems should be recognized in the text. It was decided to entrust the consideration of these matters to an open ended working party. The working party recommended the following text:

"Article 3. *Discrepancies within a payment order*

"(1) If there is an inconsistency in a payment order between the words and figures that describe the amount of money, the receiving bank is required to notify the sender of the discrepancy unless the sender and the receiving bank had agreed that the receiving bank would rely upon either the words or the figures, as the case may be.

"(2) Where the beneficiary is described by both word and figures, and the intended beneficiary is not

identifiable with reasonable certainty, the beneficiary's bank must notify, within the time prescribed in article 7, paragraph (4), its sender, and also the originator's bank if it is identified on the payment order."

63. In explanation of the text submitted it was said that it had been agreed that the legal rules governing the allocation of loss arising out of the actions of a fraudulent third party between banks in the credit transfer should be considered in the provisions on liability. As to proposed paragraph (1), it was believed that the problem arose only between the originator and originator's bank since, as stated before, interbank electronic payment orders transmit the amount in figures only. As between the originator and originator's bank it was conceivable that there would be an agreement that the bank would read only one data field, which would probably be the field expressing the amount in figures in the case of electronic credit transfers.

64. In regard to paragraph (2) it was said that the working party was conscious that allowing or requiring the beneficiary's bank to identify the beneficiary or its account either in words or in figures or, alternatively, to credit the person identified by words, raised the possibility that the wrong account would be credited. On the other hand, stopping the credit transfer while inquiries were being made delayed the time before which the beneficiary would be credited. The working party had opted for the latter solution, with the guarantee that the time limit specified in article 7(4) applied to the time when the notice had to be given and that the beneficiary's bank had to notify the originator's bank, if that bank was identified on the payment order.

65. Concern was expressed that paragraph (1) stated an objective test that a discrepancy in amount existed in fact. It was suggested that, since the problem would have been caused by the error in the sender's payment order, the rule placing obligations on the receiving bank should apply only if the receiving bank knew or ought to have known of the discrepancy.

66. The following text was proposed to implement a suggestion that where there was a discrepancy in the amount the bank should exercise its judgment on the basis of its knowledge of the circumstances:

"(1) If there is a discrepancy in a payment order between the words and figures that describe the amount of the transfer, and if the sender and the receiving bank have agreed that the receiving bank can rely on the basis of either of the two, the words or the figures, as the case may be, the receiving bank shall execute the payment order in accordance with that agreement. Lacking such an agreement, the receiving bank may, at its responsibility, execute the payment order according to the words or the figures. If in this last case the receiving bank decides not to execute the payment order, it is obliged to notify the sender of the discrepancy."

67. In reply to the observation that the only difference between the new proposal and the text recommended by the working party was that the new proposal made it clear that the receiving bank had the possibility to execute the payment order, it was stated that the difference in emphasis was important in that the new proposal explicitly recognized established bank practice. Moreover, it was suggested, such a bank practice should be encouraged. It was also suggested that the general conditions of the banks might provide specific provisions as to what the banks would do when faced with the situations envisaged.

68. It was noted that paragraph (2) provided that the beneficiary's bank was required to notify the originator's bank even though there might be no contractual relationship between them. It was suggested that where there was no contract between them, there would be no duty of the beneficiary's bank to the originator's bank. This was said to be important for determining whether the beneficiary's bank would be liable to the originator's bank if the required notice was not given.

69. After discussion the Working Group decided to adopt the text as proposed by the working party.

Article 4. *Obligations of sender*

70. The text of article 4 as considered by the Working Group was as follows:

"(1) A sender is bound by a payment order or by the revocation or amendment of a payment order [as] [that has been] received by the receiving bank if the sender authorized the order or is otherwise bound by it pursuant to the law of agency [or other applicable law].

"(2) A purported sender is bound by an unauthorized payment order or by the revocation or amendment of a payment order if the purported sender had available a commercially reasonable procedure for authentication that would permit the receiving bank to verify that the payment order was sent by the purported sender and if the receiving bank complied with the requisite verification.

"(3) A [sender] [sending bank] is obligated to adhere to any message structure prescribed by the transmission system used or agreed between the parties.

"(4) A sender is obligated to reimburse the receiving bank to the extent the receiving bank has properly executed the payment order of the sender [including any fees or costs charged or incurred by the receiving bank]."

Paragraph (1)

71. It was noted that paragraph (1) contained three separate rules: (1) a sender is bound by a payment order when it has been received by the receiving bank; (2) the sender is bound by the terms of the payment order as received, thereby leaving the risk of errors in transmission on the sender; (3) the sender is bound by the payment order if he authorized it or was bound by it pursuant to the law of agency or other applicable law. It was stated that the paragraph should be limited to the circumstances that led to the sender being bound, leaving the two other matters to other provisions.

72. It was suggested that the paragraph envisaged three categories of factual situation: (1) the sender sent the payment order himself; (2) the payment order was sent under the proper authorization of the person, including legal person, sought to be held as sender; (3) the sender should be held responsible for the payment order because of the role of the person who in fact sent or authorized the sending of the payment order. It was recognized that the third category would be the most difficult to determine because it might include employees or other persons who had innocently acted beyond their instructions as well as such persons as current or former employees who used information they had gained in the course of their employment in order to send a fraudulent payment order.

73. Various suggestions were made as to how the second and third categories of cases should be described. Under one suggestion, instead of determining whether the payment order was "authorized", the provision should refer to whether the person sending had the "power" to do so. Under another suggestion reference to the law of agency should be deleted. Not only did it raise the question of conflict of laws between the law of agency of the sender and that of the receiving bank, but it raised the difficult problems of the different concepts of agency in different systems of law. It was suggested that one method by which reference to the concept of agency could be eliminated was to end the sentence after the words "or is otherwise bound by it". Although the question was raised as to whether a provision that read "The sender is bound by a payment order . . . if the sender . . . is otherwise bound by it" conveyed any meaning, it was suggested that those words would lead to the desired result.

74. It was suggested that many of the marginal cases would in fact be covered by paragraph (2), because the payment order would have been authenticated. It was also suggested that the primary rule should be set forth in the provision on authentication and that resort to the provision on authorization should be necessary only in those cases in which the sender or purported sender would not be bound as a result of the authentication of the payment order. Consequently, the Working Group decided to consider paragraph (2) as an aid to understanding paragraph (1).

Paragraph (2)

75. It was stated that authentication was more than a technique, as was provided in the definition of "authentication" in article 2*(j)*; authentication was the product of an agreement between the sender and the receiving bank. The terms of the agreement might be limited by law. For example, the law might provide that the authentication procedure had to meet some minimum standard before it was acceptable. That standard was expressed as "commercially reasonable" in the current text. The law might provide that the receiving bank could agree to provide an authentication procedure that was more secure than the minimum that would be commercially reasonable. The law might also provide that the parties could change the allocation of responsibility determined by the law, but only in favour of the sender.

76. Without questioning the conclusion that authentication procedures in respect of payment orders transmitted eletronically were currently the product of agreement, it was noted that if public key encryption became a functioning reality, authentication would not depend on prior agreement between sender and receiving bank.

77. The discussion in the Working Group proceeded on the basis that it was the receiving bank that determined the type of authentication that it was prepared to receive from the sender. Under one view a non-bank sender should never be bound by an unauthorized payment order even if the authentication procedure used was commercially reasonable. It was stated that the receiving bank was in a better position than the sender to guard against third party fraud. In response it was stated that, while such a rule or some variant of it (such as a low limit of liability for fraudulent payment orders) might be appropriate for consumer credit transfers, it would not be appropriate where the non-bank sender was a large commercial or financial organization that was as sophisticated in authentication techniques as a bank might be. It was also stated that, if banks would be held responsible for unauthorized credit transfers even though the authentication procedure followed had been commercially reasonable, banks would not be willing to engage in electronic funds transfers.

78. It was stated that the standard of commercially reasonable was unclear. In response it was stated that this was necessarily the case because the procedures that were commercially reasonable would change over time. It was stated that the requirement that the security procedure had to be commercially reasonable was a stricter standard than might appear because, if an authentication had been successfully falsified without the collusion of employees of either the sender or the receiving bank, the bank would have a difficult time convincing the court that the authentication procedure had been commercially reasonable.

79. It was suggested that the sender should be bound by a payment order where the authentication procedure was commercially reasonable even if the receiving bank did not comply with the requisite verification but the authentication would have tested as genuine had the receiving bank complied.

80. There was general agreement that the sender should not be bound by the payment order if the knowledge as to how to falsify the authentication was gained from an employee of the receiving bank. It was suggested that it would be difficult for a sender to prove that an employee of the receiving bank had been the source of the information about the authentication procedure. In reply it was stated that the matter could be left to the court to weigh the evidence. It was also stated that the experience in one country was that the dishonesty of the bank's employees was usually easy to determine, often because they had left the country with the proceeds of the fraud.

81. As a further comment on the allocation of loss in such cases, it was noted that when the fraud occurred between two banks, the loss automatically fell on the banking system. When the loss occurred as a result of fraud between the originator and the originator's bank, the

loss to the originator could be no greater than the maximum debit that could be entered to the account. Customers of banks could limit the extent of their potential loss by reducing the amount of funds they held in the account and by reducing the overdraft lines automatically applied to the account.

82. A working party was asked to redraft the two paragraphs in the light of the discussion. The text proposed by the working party consisting of three new paragraphs and a new definition of "authentication" was as follows:

"(1) A purported sender is bound by a payment order, if he authorized it or if it was issued by a person who, pursuant to the applicable law [of agency], otherwise had the power to bind the purported sender by issuing the payment order.

"(2) Notwithstanding anything to the contrary in paragraph (1), when a payment order is subject to authentication, a purported sender of such an order is bound if:

(a) the authentication provided is a commercially reasonable method of security against unauthorized payment orders;

(b) the amount of the order is covered by a withdrawable credit balance or authorized overdraft in an appropriate account of the sender with the receiving bank; and

(c) the receiving bank complied with the authentication.

Commercial reasonableness is to be determined by considering the circumstances of the sender, including the size and frequency of payment orders normally issued by the sender, alternative authentication offered to the sender, and authentication generally in use.

"(3) *Variant A*

A purported sender [that is not a bank] is, however, not bound by a payment order under paragraph (2) if

(i) the actual sender was a person other than a present or former employee of the purported sender, and

(ii) the actual sender had gained access to the authentication procedure without fault on the part of the purported sender.

Variant B

No sender may become bound under paragraph (2) if the sender proves that the payment order was executed by

(a) a present or former employee or agent of the receiving bank, or

(b) a person acting in concert with a person described in *(a)*, or

(c) any other person who, without the sender's authorization, obtained confidential information about the authentication from a source controlled by the receiving bank, regardless of fault.

"Article 2. *Definitions*

(j) 'Authentication' means a procedure to determine whether all or part of a payment order is authorized, and which is the product of an agreement."

83. In respect of paragraph (1) of the proposal, the concerns expressed previously about referring in this context to the applicable law or to the concept of agency were repeated. A new proposal was made as follows:

"(1) A purported sender is bound by a payment order if it was issued by the purported sender or by another person who had the authority to bind the purported sender."

The proposal received considerable support and it was decided to retain it as a possible formulation of the paragraph.

84. In respect of paragraph (2), a number of suggestions were made to the effect that subparagraph *(b)* was too absolute. One suggestion was to delete the subparagraph. In response it was stated that the subparagraph provided a measure of customer protection since the debit to the account could be no greater than the withdrawable credit balance or authorized overdraft. However, it was also pointed out that in some countries the general conditions of the banks permit a bank, but do not require it, to create an overdraft when it receives a payment order from its customer.

85. It was also suggested that subparagraph *(b)* as drafted could cause problems in a net settlement system since the sending bank in such a system had no account relationship with the receiving bank. In order to accommodate this situation it was proposed that the following words should be added to the end of subparagraph *(b)*:

"or there is an agreement between the sender and the receiving bank that such payment orders are to be executed despite the absence of such balances or overdrafts".

86. There was some discussion of the effect of the proposed wording on the relations between the originator and the originator's bank. Under one view the provision should be restricted to interbank relationships by using the words "sending bank" rather than "sender". Under another view the provision as drafted seemed to cover the situation already discussed of the agreement that a bank could create an overdraft when it received a payment order.

87. Following the discussion the Working Group decided to adopt paragraph (2) with the proposed addition to subparagraph *(b)*.

88. In respect of paragraph (3), the advantages and disadvantages of the two variants were discussed. In general, those who were in favour of placing on the receiving bank the major risk that an authentication had been falsified by a known or unknown third person favoured variant A, while those who were in favour of placing the major risk on the sender favoured variant B.

89. In favour of variant A it was stated that the receiving bank usually designed the authentication procedure. Placing the major risk on the receiving bank would act as an incentive to the bank to improve the authentication procedures offered by that bank to its sender. Variant A was also said to reflect the general policy in respect of paper-based payment orders and of negotiable instruments that the bank can act only on a proper signature.

90. In favour of variant B it was stated that senders choose the method of transmission of the payment order. Variant B was said to reflect the general policy that the party that chooses the transmission system should bear the risks associated with that transmission system. Moreover, variant B would act as an incentive to senders to protect the authentication or encryption key in their possession. It was also stated that in some cases, if the receiving bank had to bear the major risk of loss in such cases, it might find it necessary to deny funds transfer services to certain customers whose payment orders had been falsified without it having been determined who was the culprit. Even if it could not be presumed legally that the fraudulent person was associated with the sender, the receiving bank would have to act on that assumption.

91. It was stated that even variant A placed a heavy burden on the sender since, if it was alleged that the authentication of a payment order had been falsified but the source of the fraud was unknown, the sender would have to show that the fraudulent party had not been a present or former employee of the purported sender and that the actual sender had not gained access to the authentication through the fault of the purported sender.

92. It was noted that the style of the two variants was not the same and it was suggested that variant A should be re-written in the style of variant B, essentially stating what would have to be proven and by whom, before a decision should be made between the two variants.

93. After discussion the Working Group decided to retain both variants and to return to the matter at its next session.

Definition of "authentication"

94. The Working Group adopted the proposed definition of "authentication".

Paragraph (3)

95. The Working Group decided to delete paragraph (3) of the text submitted by the Secretariat (paragraph 70, above) since it served only to reiterate an obligation arising out of the agreement of the parties.

Paragraph (4)

96. The discussion in the Working Group focused on two separate but related questions, i.e. when the obligation of the sender to furnish funds to the receiving bank arose and when the sender was required to make the funds available to the receiving bank. It was noted that the text of paragraph (4) before the Working Group indicated that the sender's obligation arose when the receiving bank properly executed the payment order it had received, but the provision did not indicate when the funds had to be made available to the receiving bank.

97. The use of "properly executed" was criticized as being too broad a term, taking into consideration the provisions of article 5(3) and (4) as to when a payment order had been properly executed by a receiving bank.

98. The view was expressed that paragraph (4) should indicate that the sender's obligation should be to make the funds available to the receiving bank by the time the receiving bank was to act on the payment order. Reference was made to the discussion at the last session of the Working Group (A/CN.9/317, para. 79). Another similar suggestion was that the word "cover" might be used instead of "reimburse" since, according to the definition of "cover" in article 2*(k)*, "the provision of cover might precede or follow execution of the order by the receiving bank." However, the definition of "cover" raised certain reservations in the Working Group.

99. In reply it was said that any provision stating that the receiving bank had no obligation to accept or execute a payment order unless it had received cover in a form satisfactory to it should be set forth in article 5. However, the obligation of the sending bank to the receiving bank should arise only at the time the receiving bank had committed itself to execute the order. It was noted that the primary factor the receiving bank would rely upon to decide to make such a commitment would be its evaluation of the creditworthiness of the sender or of the quality of the cover furnished. It was suggested that the time the receiving bank had committed itself should be expressed as the time when the receiving bank had "accepted" the payment order. It was said that use of the concept of acceptance would be consistent with the banking practice whereby receiving banks often execute the order even though cover has not yet been furnished. (For the Working Group's later discussion of "acceptance" see paragraphs 126 to 143, below.)

100. It was suggested that the time when the second obligation of the sender should be due, i.e. when it should make the funds available to the receiving bank, should be the execution date. It was stated that this was of particular importance in the case of a value dated transaction where the receiving bank might accept the payment order on day 1 with an execution date of day 5. The obligation of the sender to pay the receiving bank would, therefore, arise on day 1 while it would be obligated to make the funds available on day 5.

101. The Working Group was in agreement that the obligation of the sender should be subject to any contrary agreement of the sender and receiving bank and that this should be expressed in the provision.

102. The text of paragraph (4) as adopted by the Working Group was as follows:

> "A sender becomes obligated to pay the receiving bank for the payment order when the receiving bank accepts it, but payment is not due until the execution date, unless otherwise agreed."

Definition of "execution date"

103. It was noted that the definition of "execution date" as set forth in article 2(l) was as follows:

"(l) 'Execution date' means the date when the receiving bank is to execute the payment order, as specified by the sender."

104. The use of "execution date" in article 4(4) to express when the sender should be obligated to make the funds available to the receiving bank was questioned on grounds that the definition expressed the date when the receiving bank was obligated to act and not when the receiving bank had performed that obligation.

105. It was noted that article 7(1)*(b)* provided that

"*(b)* When no execution, value or pay date is stated on a payment order, the execution date of that order shall be deemed to be the date the order is received, unless the nature of the order indicates that a different execution date is appropriate."

106. It was decided that the provision as it related to the lack of an execution date on the payment order should be made part of the definition of "execution date". Since it was not clear as to the proper disposition of the provision in respect of a lack of a value or pay date on the payment order, it was decided that article 7(1)*(b)* would continue as before with the word "execution" deleted until those aspects of the provision could be considered in their proper context.

Branch of a bank

107. It was noted that the decision had been made to delete from the definition of the word "bank" the statement that a branch of a bank was to be considered to be a separate bank, to include a statement in article 1 that for the purposes of the scope of application branches of a bank in different countries were to be considered separate banks and to consider the question in regard to individual substantive provisions.

108. The proposal was made that branches of a bank should be considered to be separate banks for the purposes of article 4. In support it was stated that such a rule was of particular importance when the banks were in different countries, since exchange control and other regulations might interfere with the ability of one branch to fulfill its obligations to another branch. It was remarked that the headquarters of a bank might not have responsibility for the acts of its foreign branches.

109. The prevailing view was that no special provision in regard to branches, whether domestic or foreign, needed to be made in article 4. It was stated that the Model Law was neither a tax nor a supervisory law. As to the relationships between the branches, it was difficult to understand why there should be private law obligations between them. This was a separate problem from whether the obligations of a branch to a customer were the obligations of that branch alone and should be satisfied only from the assets of the branch or whether they were the obligations of the entire bank. It was stated that article 4 was not relevant to that problem.

Article 5(1). *Obligations of receiving bank*

110. As a preliminary comment, the view was expressed that the discussion of acceptance in article 6 should precede the discussion of article 5(1) since the passage of time, at least in certain circumstances, might be considered to give rise to acceptance. If the passage of time might be so considered, all of the obligations of the receiving bank would arise on acceptance. Under another view, even if the concept of acceptance based on the actions of the receiving bank was eventually adopted by the Working Group, it would not be appropriate to mix the obligations of the receiving bank prior to its acceptance of the payment order with its obligations subsequent to its acceptance of the payment order.

111. After discussion the Working Group decided that it would first consider article 5(1) on the extent of the obligation of a bank to comply with a payment order it had received or to give notice that it would not do so. It decided that following its consideration of article 5(1), it would discuss the concept of acceptance, including both the usefulness and the content of the concept, before it returned to the obligations of a bank that had accepted a payment order.

112. The text of article 5(1) as considered by the Working Group was as follows:

"(1) A receiving bank that receives a payment order from a sender with which there was a prior relationship is obligated within the time required by article 7 either to accept the order or to notify the sender that it will not do so, unless the reason for failing to accept the payment order was that the sender did not have sufficient funds with the receiving bank to reimburse it or that the receiving bank was precluded by an inter-bank agreement from executing the payment order. If within the required time a receiving bank does not give notice that it will not act on a payment order, it may no longer give such notice and is bound to execute the order."

113. The Working Group considered the nature of the various relationships that might be included within the term "prior relationship". It was suggested that the question related entirely to inter-bank payment orders, since the existence or not of a prior relationship would be clear in regard to a non-bank sender.

114. Under one view any bank that received a payment order from another bank should have an obligation to comply with it or to give notice that it would not do so. Under another view prior to actions constituting acceptance of the order, the receiving bank should have obligations to a sending bank only if there was a prior contractual relationship.

115. It was suggested that such a rule would be insufficient because banks often established correspondent relations with one another by exchange of telex keys or other authentication or encryption keys without the existence of a contract between them. It was also suggested

that banks that were members of the same clearing house or communications system, such as SWIFT, should be considered to have a prior relationship whether or not there was a specific contract between them.

116. The view was expressed that having a prior relationship was too vague a concept to be useful, since two banks whose only contact had been litigation could be said to have had a prior relationship. Under that view, which was adopted by the Working Group, it was better not to limit the obligation of the receiving bank to cases in which there existed a prior relationship.

117. Under one view the receiving bank should be obligated to inform the sender that it was not going to comply with the payment order because of a lack of cover as well as for any other reason. In support of that view it was stated that the sender might believe that there were sufficient funds available to cover the payment order and that both it and the originator might be seriously prejudiced if there was no notification to it.

118. Under the prevailing view the receiving bank should not have to notify the sender if its reason for not complying with the payment order was that there were insufficient funds to cover it. It was suggested that, if the concept of acceptance was retained, the word "acceptance" could be substituted for the word "comply".

119. The Working Group discussed what obligation the bank should have to notify the sender if, in addition to insufficient funds, it had another reason not to comply with the payment order, such as that the payment order had been misdirected and it could not, therefore, execute the order. Although there was strong support for a provision that the receiving bank should have to notify the sender if it had an additional reason for not complying with the order, the Working Group decided that article 5(1) should provide that no notice needed to be given if one of the reasons for failing to comply was insufficient cover. It also decided to add a new provision on the obligation of a receiving bank that received a payment order that had clearly been misdirected.

120. The Working Group adopted paragraph (1) as follows:

"(1) In the absence of an agreement otherwise,

(a) a receiving bank is not required to comply with the sender's payment order;

(b) a receiving bank that decides not to comply with a sender's payment order is required to notify the sender of its decision, within the time required by article 7, unless one of the reasons for non-compliance is insufficient funds.

If a receiving bank does not notify the sender within the required time that it will not comply, it may no longer give such notice and is bound to execute the order."

121. The Working Group considered a new paragraph on misdirected payment orders as follows:

"(1 *bis*) When a payment order is received that contains information which indicates that it has been misdirected, the receiving bank shall notify the sender of the misdirection. [If the receiving bank fails to notify, and the credit transfer is delayed, the receiving bank shall be liable:

(a) if there are funds available, for interest on the funds that are available for the time they are available to the receiving bank; or

(b) if there are no funds available, for interest on the amount of the payment order for an appropriate period of time, not to exceed 30 days.]"

122. There was general agreement with the statement of duty in the first sentence of the proposal. It was stated that the duty there imposed would help to assure that the funds transfer system would function as intended. Nevertheless, some concern was expressed that the fact that the payment order contained information that indicated that it had been misdirected was stated in an objective fashion, thereby raising the possibility that a bank might breach the duty unknowingly. A question was also raised as to how the provision would apply if the sender was not a bank and the payment order did not indicate the sender's address. A further suggestion was that a time limit should be imposed as to when the notice should be given.

123. The suggestion was made that the provision should go into or following article 3 rather than into article 5.

124. In respect of the second sentence, under one view it should be deleted and the consequences of a breach of duty should be left to the civil law. Under another view the sanctions for a breach of the duty should be set forth in article 9. As to the content of the second sentence, a suggestion was made to include a third case, i.e. when the funds available to the receiving bank were in an account that did not pay interest.

125. After discussion the Working Group decided to retain the second sentence unchanged and to consider its content and final location at the next session. Therefore, the proposed new paragraph was adopted as submitted.

Article 6. *Acceptance of a payment order*

126. The text of article 6 as considered by the Working Group was as follows:

"(1) A payment order is accepted by a receiving bank that is not the beneficiary's bank at the earliest of the following times:

"*(a)* when the bank sends a payment order intended to carry out the payment order received;

"*(b)* when the bank receives both the payment order and notice that cover is available, provided that there was a prior relationship with the sender.

"(2) The beneficiary's bank accepts a payment order at the earliest of the following times:

"*(a)* when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders received from the sender without notification that cover is in place [or a course of action to that effect has been established between them];

"*(b)* when the bank receives both the payment order and notice that cover is available;

"*(c) Variant A*

when the bank credits the beneficiary's account [without reserving a right to reverse the credit if cover is not furnished] or otherwise pays the beneficiary;

Variant B

when the bank gives the beneficiary the [unconditional] right to withdraw the credit or the fund [, whether or not a fee or payment in the nature of interest must be paid for doing so];

Variant C

when the bank gives notice to the beneficiary that it has the right to withdraw the credit or the funds;

"*(d)* when the bank otherwise applies the credit as instructed in the payment order;

"*(e)* when the bank applies the credit to a debt of the beneficiary owed to it or applies it in conformity with an order of a court."

127. The Working Group discussed whether the concept of acceptance was useful in the context of the Model Law. It was pointed out that it served the purpose of describing in a single word a number of different actions of different receiving banks, so that the word might be used in various substantive provisions. By way of example, a credit transfer through one intermediary bank was hypothesized. In such a transfer there would be three payment orders and three receiving banks, namely the originator's bank, an intermediary bank and the beneficiary's bank. In each case the obligation of the sender under article 4 to pay its own payment order would be the same, even though the obligation would arise on the performance of different kinds of acts by the originator's bank and intermediary bank on the one hand and the beneficiary's bank on the other. It was stated that the use of the concept of acceptance permitted clarity of analysis and economy of drafting.

128. Doubts were raised by some delegations as to whether the concept was useful. It was suggested that it would be better to rely on the execution of the payment order by the receiving bank. Furthermore, the use of the term "acceptance" caused difficulties in many legal systems because it seemed to suggest that a contract was created as a result of the receiving bank's actions. It was recognized that in other legal systems that also spoke of an offer and acceptance in contract formation the use of this word did not cause the same difficulties. It was also recognized that, if the concept was retained, another word could eventually be chosen in place of acceptance.

129. The Working Group agreed to reconsider the question at a later time when the consequences of "acceptance" might be seen more clearly and the Working Group might have been sufficiently enlightened in regard to the concept in order to decide whether it would be convenient to retain or to abandon it. Consequently, any references to acceptance in the current text were understood not to bind the Working Group in respect of the concept itself.

130. Without prejudice to the decision that may be made as to the retention or abandonment of the concept, the Working Group considered the drafting of article 6.

Paragraph (1)

131. The Working Group decided to delete subparagraph *(b)*. In support it was stated that it had been decided in the discussion on article 5(1) that all banks, including the originator's bank, should have the right under the Model Law not to comply with a payment order even if cover was available.

132. A suggestion was made to add a statement that acceptance would also occur when an express notice of acceptance was given.

133. A suggestion was made that acceptance should occur when the receiving bank should have sent its payment order to carry out the payment order it received and not when it actually did send the order. In reply it was stated that that was a matter for the provision on improper execution. However, it was stated, in the light of the decision in regard to article 5(1) (see paragraph 120), acceptance should also be considered to have occurred when the receiving bank should have given the notice required by that provision. The Working Group adopted that suggestion.

134. After discussion the Working Group adopted paragraph (1) as follows:

"(1) A receiving bank that is not the beneficiary's bank accepts the sender's payment order at the earliest of the following times:

(a) when it sends a payment order intended to carry out the payment order received; or

(b) when it should have given the notice required by article 5(1)."

Paragraph (2)

135. It was noted that paragraph (2) could be divided into two groups of subparagraphs, since subparagraphs *(a)* and *(b)* both described events relating to reception of the payment order by the beneficiary's bank while subparagraphs *(c)*, *(d)* and *(e)* related to actions of the beneficiary's bank subsequent to receipt of the payment order. It was also noted that all five subparagraphs were intended to describe objective acts so that in case of subsequent dispute over the relevant rights and obligations of the parties, it would not be necessary to determine the subjective intention of the beneficiary's bank or the subjective intention of the relevant official of that bank in regard to the payment order.

136. There was general agreement that the policy already adopted in respect of article 5(1) that a receiving bank should not be required to comply with the sender's payment order even if the receiving bank had received adequate cover should apply to the beneficiary's bank as well as to all other receiving banks. It was suggested that in addition to the reasons for refusing to comply with a payment order that were common to all receiving banks,

such as that it was not satisfied with the cover or that it believed that the particular payment order was part of a money laundering operation, the beneficiary's bank might have received instructions from the beneficiary not to accept the particular payment order or that category of payment orders. As an example of the latter situation, it was noted that in the United States some beneficiaries for some kinds of transactions authorize their banks to accept only Fedwire transfers, since the credit to the beneficiary's bank and, therefore, to the beneficiary is irreversible for any reason while a credit to their account arising out of a transfer through CHIPS would be reversible if there was a failure to achieve settlement at the end of the day.

137. As a result the Working Group decided to delete subparagraph *(b)* and to retain subparagraph *(a)* but to modify it by adding an additional volitional requirement.

138. In regard to subparagraph *(c)*, it was suggested that, although the three variants were presented as being mutually exclusive, variants A and C were compatible. It was stated that in a given case the bookkeeping operation of crediting the account of the beneficiary might occur before or after the notice of the right to withdraw the funds had been given to the beneficiary. Since either action would signify the intention of the beneficiary's bank to accept the payment order, both should be included in the Model Law. Therefore, the Working Group decided to delete variant B.

139. Subparagraph *(d)* was accepted by the Working Group.

140. The view was expressed that the reference to applying the credit in conformity with an order of a court should be deleted. Not only did it contradict the basic proposition that the beneficiary's bank should act in conformity with the payment order, but it raised questions of conflict of laws as to the court whose orders would have to be followed. In reply it was stated that it was natural that the beneficiary's bank would have to follow court orders addressed to it. It was also suggested that the issue might not be of importance because the natural procedure for a bank to follow would be to credit the beneficiary's account and then to take the actions directed by the court order. Therefore, those situations would in fact fall under subparagraph *(c)*. The prevailing view was that subparagraph *(e)* was useful and should be retained.

141. It was decided that a new subparagraph should be added reflecting that acceptance would take place whenever there was an objective act signifying acceptance by the beneficiary's bank.

142. A small working party was requested to prepare a new version of paragraph (2) in conformity with the decisions. In preparing the new text the working party was requested to include the following points: the beneficiary should retain the power to refuse the crediting of particular transfers or of particular categories of transfers to his account; the beneficiary's bank should retain the right to refuse to comply with payment orders sent to it without giving reasons for its refusal, subject to its contractual obligations to the beneficiary or to the sender; if the beneficiary's bank refused to comply with the payment order, it would have a duty to notify the sender. The text proposed by the working party was as follows:

"(2) If the beneficiary's bank has an agreement with the sender or the beneficiary, or is bound by an inter-bank agreement, settling the terms and conditions upon which it will or will not execute payment orders, it has no obligation to execute a payment order that is within the scope of that agreement, except as provided in that agreement.

"(3) In the absence of such agreement, the beneficiary's bank is under no obligation to execute or to give reasons for refusing to execute any payment order. It becomes bound to execute a payment order when it performs an act evidencing its irrevocable intention to be bound, such as:

(a) when the beneficiary has an account with the beneficiary's bank to which the funds may be credited, upon the first to occur of the following events:

- (i) when the bank
  - — prepares a credit to be entered into the account in the ordinary course of the bank's operations except when such credit is provisional or subject to reversal at the option of the bank; or
  - — enters a credit to the account;
- (ii) when a provisional or reversible credit becomes irrevocable or irreversible except for the purpose of correcting an error in the amount or the account credited;
- (iii) when the bank notifies the beneficiary that the funds are available to and freely disposable by the beneficiary;

(b) where the beneficiary has no account with the beneficiary's bank to which the funds may be credited, upon the first to occur of the following events:

- (i) when the bank notifies the beneficiary that it is holding the funds for him;
- (ii) when the bank pays the beneficiary;
- (iii) when the bank applies the funds as directed by the beneficiary."

143. The Working Group noted the proposal but did not have time to consider it in substance.

Article 5(2)-(4). *Obligations of receiving bank*

144. Following its discussion of the concept of acceptance in article 6 the Working Group returned to its consideration of article 5, paragraphs (2) to (4). The text of those paragraphs as considered by the Working Group was as follows:

"(2) A receiving bank that accepts a payment order is obligated to execute it in a proper manner in accordance with the instructions.

"(3) A receiving bank that is not the beneficiary's bank properly executes a payment order if:

(*a*) another bank accepts a payment order from the receiving bank that is consistent with the contents of the payment order received by the receiving bank and that contains the instructions necessary to implement the credit transfer in an appropriate manner, and

(*b*) the other bank is the beneficiary's bank or an appropriate intermediary bank; and

(*c*) (i) the receiving bank is the originating bank and the funds transfer is completed within the time required by article 7, or

(ii) the receiving bank is an intermediary bank, and the other bank accepts the payment order within the time required by article 7.

"(4) A receiving bank that is the beneficiary's bank properly executes a payment order

(*a*) if the beneficiary maintains an account at the beneficiary's bank into which funds are normally credited, by, in the manner and within the time prescribed by law, including article 7, or by agreement between the beneficiary and the bank;

(i) crediting the account,

(ii) placing the funds at the disposal of the beneficiary, and

(iii) notifying the beneficiary; or

(*b*) if the beneficiary does not maintain an account at the beneficiary's bank, by

(*a*) making payment by the means specified in the order or by any commercially reasonable means; or

(*b*) giving notice to the beneficiary that the bank is holding the funds for the benefit of the beneficiary."

Paragraphs (2) and (3)

145. Paragraph (2) was considered in connection with the discussion of paragraph (3).

146. It was noted that the policy decision made by the Working Group at its sixteenth session and affirmed at its seventeenth session that the originator's bank and each intermediary bank should be responsible to the originator for the performance of the credit transfer was implemented in paragraph (3).

147. Under one view that policy decision should be reversed and each receiving bank should be responsible only for its own activities, including the selection of an appropriate intermediary bank. It was inappropriate to hold one bank responsible for the actions or failures of another bank that it could not control.

148. Under another view the policy expressed by article 5 should be re-affirmed. It was said that it was particularly important in international funds transfers for the originator to be able to look to its bank for the proper performance of the entire credit transfer because of the difficulties a non-bank customer would have to investigate the causes for a credit transfer not being carried out as instructed, especially in a foreign country. The difficulties of claiming against a bank with which the originator had no direct contractual or banking relationship were mentioned. In some legal systems the originator would not be able to claim successfullly against a bank with which it had no contract. If the claim had to be litigated in a foreign court, differences in language and legal procedure might add to the difficulties for the originator. In this respect it was noted that some countries might have doctrines in regard to court jurisdiction and to the responsibility of an intermediary bank as the agent of the originator that would increase the likelihood of a successful legal action in the courts of the originator against a foreign intermediary bank but that those doctrines were not available in other countries. It was stated that similar problems in the transport industry had led to the widespread rule that the consignor of goods could hold the carrier with which it had contracted responsible for damage occurring throughout the voyage. In that regard it was stated that a distinction should be made between the obligations of the originator's bank and those of other receiving banks.

149. In reply it was stated that it was a matter of balancing costs and benefits. If the burden on the originating banks was too high, banks would have to increase their fees for making credit transfers, and they might even withdraw in whole or in part from the activity. It was stated that the concern in the Working Group had been to aid the originator in investigating and correcting transfers that had not been carried out properly and in pursuing its claim against the bank where the error or delay had occurred. Several proposals were made to express such a duty of aid in the investigation and pursuit of claims.

150. It was stated that such a duty would not be sufficient; not only would its practical implementation be unclear, but the decision at the last session of the Working Group to accept a restricted liability of the bank for indirect damages was linked to the broad statement of responsibility of the originator's bank.

151. It was suggested that the structure of article 5 as presented was incorrect. Article 5 should contain only the provisions relevant to the actions the banks should take to carry out the credit transfer and the actions necessary to rectify the situation if problems had arisen. It was stated that provisions on liability, including the party who should be liable and the amount of liability, should probably be grouped together in article 9.

152. It was proposed that the actions a receiving bank that was not the beneficiary's bank should be obligated to do could be grouped into three categories: (1) to send a proper payment order to a proper bank within the proper time, (2) to refund what it had been paid by its sender if the credit transfer was not successfully carried out, and (3) to assist in seeing that a credit transfer that was originally carried out for an amount less than that provided in the originator's payment order is successfully carried out. Another suggestion was that receiving banks should have the obligation to transmit to their senders any notice they received that a bank would not comply with the payment order.

153. In regard to the obligation of the receiving bank to refund what it had been paid if the credit transfer was not

successfully carried out, it was proposed that a new article 5 *bis* should be adopted as follows:

"(1) If a payment order is not issued to the beneficiary's bank, the receiving bank is required

(a) to assign its right of reimbursement against its receiving bank to the sender, and

(b) to assist the sender to obtain such reimbursement.

"(2) The obligation to reimburse the sender arises only to the extent that the receiving bank has itself received the funds."

This proposal was not adopted.

154. After discussion the Working Group decided to delete paragraph (2) as being unnecessary and to adopt paragraph (3) as follows:

"(3) A receiving bank other than the beneficiary's bank that accepts a payment order is obligated under that payment order:

(a) to issue a payment order, within the time required by Article 7, to either the beneficiary's bank or an appropriate intermediary bank, that is consistent with the contents of the payment order received by the receiving bank and that contains the instructions necessary to implement the credit transfer in an appropriate manner;

(b) where a payment order consistent with the contents of the payment order issued by the originator and containing instructions necessary to implement the credit transfer in an appropriate manner is not issued to or accepted by the beneficiary's bank—to refund to its sender any funds received from its sender, and the receiving bank is entitled to the return of any funds it has paid to its receiving bank; and

(c) where a payment order is issued to a beneficiary's bank in an amount different from the amount in the payment order issued by the originator to the originator's bank—to assist the originator and each subsequent sending bank, and to seek the assistance of its receiving bank, to obtain the issuance of a payment order to the beneficiary's bank for the difference between the amount paid to the beneficiary's bank and the amount stated in the payment order issued by the originator to the originator's bank."

155. It was suggested that article 5 should also include a provision similar to article 7(1)*(c)*, first sentence and article 7(1)*(d)* spelling out that the originator's bank was responsible to the originator for the proper completion of the credit transfer. The Working Group agreed to consider that suggestion at its next session.

Paragraph (4)

156. It was noted that the deletion of paragraph (2) would require a modification of the introductory words of paragraph (4) consistent with the modification of the introductory words of paragraph (3). The Working Group adopted the following text for the introductory words:

"A beneficiary's bank that accepts a payment order fulfills its obligations under that payment order" . . . .

157. Since article 5(4) was the last matter to be considered by the Working Group at this session, the Working Group did not have time to give the paragraph full consideration. It was noted that this paragraph concerned the relationship of the beneficiary with the beneficiary's bank. It was stated that the propriety of including it within the Model Law might depend upon the decision as to whether the credit transfer was considered to be completed, with the legal consequences that would follow, when the beneficiary's bank accepted the payment order or only when the beneficiary's bank credited the beneficiary's account or performed a similar act. In the first case paragraph (4) might not be needed, leaving those rules to the law that governed the account relationship. In the latter case, paragraph (4) would fulfill an important role in defining the obligations of the beneficiary's bank in regard to the credit transfer.

158. A number of questions of drafting were raised. It was pointed out that the words "prescribed by law" in subparagraph *(a)* referred to any law that might set forth the manner by or the time in which the beneficiary's bank had to perform the actions described in regard to the account. It was suggested that the words "into which funds are normally credited" in subparagraph *(a)* might be replaced by the words "to which funds may be credited".

159. At the close of the discussion it was agreed that aside from the change to the introductory words, paragraph (4) would remain unchanged until the next session of the Working Group when it would again be reviewed.

Exchange controls

160. It was noted that article 76(1) of the United Nations Convention on International Bills of Exchange and International Promissory Notes contained a provision that nothing in the Convention prevented a Contracting State from enforcing exchange control regulations applicable in its territory or provisions relating to the protection of its currency, including regulations to which it was bound by virtue of international agreements to which it was a party. It was suggested that a similar provision should be included in the Model Law, probably in connection with article 12 on conflict of laws.

161. It was agreed that the matter should be considered when the Working Group considered article 12.

FUTURE SESSIONS

162. The Working Group noted that the nineteenth session would be held in New York from 10 to 21 July 1989 and that the twentieth session would be held in Vienna from 27 November to 8 December 1989.

ANNEX

Draft Model Law on International Credit Transfers [para. 19]

Resulting from the eighteenth session of the Working Group on International Payments[2]

CHAPTER I. GENERAL PROVISIONS

Article 1. *Sphere of application**

(1) This law applies to credit transfers where the originator's bank and the beneficiary's bank are in different countries. [para. 29]

(2) For the purpose of determining the sphere of application of this Law, branches of banks in different countries are considered to be separate banks. [para. 54]

Article 2. *Definitions*

(a) "Credit transfer" means a complete movement of funds from the originator to the beneficiary pursuant to a payment order received by the originator's bank [directly] from the originator. A credit transfer may involve one or more payment orders. [para. 38]

(b) "Originator" means the issuer of the first payment order in a credit transfer. [para. 41]

(c) "Beneficiary" means the ultimate person intended to receive the funds as a result of a credit transfer. [para. 42]

(d) "Sender" means the person who sends a payment order including the originator and any sending bank. [para. 44]

(e) "Bank" means a financial institution which, as an ordinary part of its business, engages in credit transfers for other persons. para. 52]

(f) A "receiving bank" is a bank that receives a payment order. [para. 57]

(g) "Intermediary Bank" means any bank executing a payment order other than the originator's bank and the beneficiary's bank. [WP.39]

(h) "Funds" or "money" includes credit in an account kept by a bank. The credit may be denominated in any national currency or in a monetary unit of account that is established by an intergovernmental institution or by agreement of two or more States, provided that this Law shall apply without prejudice to the rules of the intergovernmental institution or the stipulations of the agreement. [para. 59]

(i) "Payment order" means a message, whether written or oral, that contains either explicitly or implicitly at least the following data:

(i) an order to the receiving bank to pay, or to cause another bank to pay, to a designated person a fixed or determinable amount of money;

(ii) identification of the sender;

(iii) identification of the receiving bank;

(iv) the amount of the transfer, including the currency or the unit of account;

(v) identification of the beneficiary;

(vi) identification of the beneficiary's bank. [WP.39]

(j) "Authentication" means a procedure to determine whether all or part of a payment order is authorized, and which is the product of an agreement. [para. 94]

(k) "Cover" means the provision of funds to a bank to reimburse it for a payment order sent to it. The provision of cover might precede or follow execution of the order by the receiving bank. [WP.39]

(l) "Execution date" means the date when the receiving bank is to execute the payment order, as specified by the sender. When no execution date is stated on a payment order, the execution date of that order shall be deemed to be the date the order is received, unless the nature of the order indicates that a different execution date is appropriate. [paras. 104 and 106]

(m) "Pay date" means the date when funds are to be at the disposal of the beneficiary, as specified by the originator. [WP.39]

(n) "Value date" means the date when funds are to be at the disposal of the receiving bank. [WP.39]

Article 3. *Discrepancies within a payment order*

(1) If there is an inconsistency in a payment order between the words and figures that describe the amount of money, the receiving bank is required to notify the sender of the discrepancy unless the sender and the receiving bank had agreed that the receiving bank would rely upon either the words or the figures, as the case may be.

(2) Where the beneficiary is described by both words and figures, and the intended beneficiary is not identifiable with reasonable certainty, the beneficiary's bank must notify, within the time prescribed in article 7, paragraph (4), its sender, and also the originator's bank if it is identified on the payment order. [para. 69]

CHAPTER II. DUTIES OF THE PARTIES

Article 4. *Obligations of sender*

(1) *Variant A*

A purported sender is bound by a payment order, if he authorized it or if it was issued by a person who, pursuant to the applicable law [of agency], otherwise had the power to bind the purported sender by issuing the payment order. [paras. 82 and 83]

Variant B

A purported sender is bound by a payment order if it was issued by the purported sender or by another person who had the authority to bind the purported sender. [para. 83]

(2) Notwithstanding anything to the contrary in paragraph (1), when a payment order is subject to authentication, a purported sender of such an order is bound if:

(a) the authentication provided is a commercially reasonable method of security against unauthorized payment orders,

(b) the amount of the order is covered by a withdrawable credit balance or authorized overdraft in an appropriate account of the sender with the receiving bank or there is an agreement

[2]The Working Group considered the title and aspects of articles 1 to 6 as set out in this annex. Where a decision was made in respect of the title, an article, paragraph or subparagraph, the paragraph number of this report where the decision was made is set forth in square brackets following the provision. Where no decision in respect of those articles was made by the Working Group, the text is that as presented to the Working Group in A/CN.9/WG.IV/WP.39, and is so indicated by "[WP.39]" following the provision. The Working Group did not consider articles 7 to 12, and the text is that as contained in WP.39, except that article 7(1)*(b)* was modified in para. 106 in connection with its consideration of article 2*(b)*.

*This law is subject to any national legislation dealing with the rights and obligations of consumers. [para. 33]

between the sender and the receiving bank that such payment orders are to be executed despite the absence of such balances or overdrafts, and

(*c*) the receiving bank complied with the authentication. [paras. 85 and 87]

(3) *Variant A*

A purported sender [that is not a bank] is, however, not bound by a payment order under paragraph (2) if

(*a*) the actual sender was a person other than a present or former employee of the purported sender, and

(*b*) the actual sender had gained access to the authentication procedure without fault on the part of the purported sender. [para. 93]

Variant B

No sender may become bound under paragraph (2) if the sender proves that the payment order was executed by

(*a*) a present or former employee or agent of the receiving bank, or

(*b*) a person acting in concert with a person described in (*a*), or

(*c*) any other person who, without the sender's authorization, obtained confidential information about the authentication from a source controlled by the receiving bank, regardless of fault. [para. 93]

(4) A sender becomes obligated to pay the receiving bank for the payment order when the receiving bank accepts it, but payment is not due until the execution date, unless otherwise agreed. [para. 102]

Article 5. *Obligations of receiving bank*

(1) In the absence of an agreement otherwise,

(*a*) a receiving bank is not required to comply with the sender's payment order;

(*b*) a receiving bank that decides not to comply with a sender's payment order is required to notify the sender of its decision, within the time required by article 7, unless one of the reasons for non-compliance is insufficient funds.

If a receiving bank does not notify the sender within the required time that it will not comply, it may no longer give such notice and is bound to execute the order. [para. 120]

(1 *bis*) When a payment order is received that contains information which indicates that it has been misdirected, the receiving bank shall notify the sender of the misdirection. [If the receiving bank fails to notify, and the credit transfer is delayed, the receiving bank shall be liable:

(*a*) if there are funds available, for interest on the funds that are available for the time they are available to the receiving bank; or

(*b*) if there are no funds available, for interest on the amount of the payment order for an appropriate period of time, not to exceed 30 days.] [para. 125]

(2) Deleted

(3) A receiving bank other than the beneficiary's bank that accepts a payment order is obligated under that payment order:

(*a*) to issue a payment order, within the time required by Article 7, to either the beneficiary's bank or an appropriate intermediary bank, that is consistent with the contents of the payment order received by the receiving bank and that contains the instructions necessary to implement the credit transfer in an appropriate manner;

(*b*) where a payment order consistent with the contents of the payment order issued by the originator and containing instructions necessary to implement the credit transfer in an appropriate manner is not issued to or accepted by the beneficiary's bank—to refund to its sender any funds received from its sender, and the receiving bank is entitled to the return of any funds it has paid to its receiving bank; and

(*c*) where a payment order is issued to a beneficiary's bank in an amount different from the amount in the payment order issued by the originator to the originator's bank—to assist the originator and each subsequent sending bank, and to seek the assistance of its receiving bank, to obtain the issuance of a payment order to the beneficiary's bank for the difference between the amount paid to the beneficiary's bank and the amount stated in the payment order issued by the originator to the originator's bank. [para. 154]

(4) A beneficiary's bank that accepts a payment order fulfills its obligations under that payment order [para. 156]

(*a*) if the beneficiary maintains an account at the beneficiary's bank into which funds are normally credited, by, in the manner and within the time prescribed by law, including article 7, or by agreement between the beneficiary and the bank

- (i) crediting the account,
- (ii) placing the funds at the disposal of the beneficiary, and
- (iii) notifying the beneficiary; or

(*b*) if the beneficiary does not maintain an account at the beneficiary's bank, by

- (i) making payment by the means specified in the order or by any commercially reasonable means, or
- (ii) giving notice to the beneficiary that the bank is holding the funds for the benefit of the beneficiary. [WP.39]

(5) The receiving bank is not bound to follow an instruction of the sender specifying an intermediary bank, funds transfer system or means of transmission to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would cause excessive delay in completion of the funds transfer. The receiving bank acts within the time required by article 7 if it, in good faith and in the time required by that article, enquires of the sender as to the further actions it should take in light of circumstances. [WP.39]

Article 6. *Acceptance of a payment order*

(1) A receiving bank that is not the beneficiary's bank accepts the sender's payment order at the earliest of the following times:

(*a*) when it sends a payment order intended to carry out the payment order received; or

(*b*) when it should have given the notice required by article 5(1). [para. 134]

(2) The beneficiary's bank accepts a payment order at the earliest of the following times:

(*a*) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders received from the sender without notification that cover is in place [or a course of action to that effect has been established between them];

(b) Deleted

(c) *Variant A*

When the bank credits the beneficiary's account [without reserving a right to reverse the credit if cover is not furnished] or otherwise pays the beneficiary;

Variant B

Deleted

Variant C

When the bank gives notice to the beneficiary that it has the right to withdraw the credit or the funds;

(d) when the bank otherwise applies the credit as instructed in the payment order;

(e) when the bank applies the credit to a debt of the beneficiary owed to it or applies it in conformity with an order of a court. [WP.39 as modified in paras. 135-143]

Article 7. *Time to accept and execute payment order or give notice*

(1) A receiving bank that is obligated under article 5 to accept a payment order or to give notice that it will not do so must accept and execute the payment order or give the required notice within the time consistent with the terms of the order, in particular, as follows:

(a) When a payment order states an execution date, the receiving bank is obligated to execute the order on that date. When the payment order states a value date but no execution date, the execution date shall be deemed to be the value date. Unless otherwise agreed, the receiving bank may not charge the sender's account prior to the execution date.

(b) When no value or pay date is stated on a payment order, the execution date of that order shall be deemed to be the date the order is received, unless the nature of the order indicates that a different date is appropriate. [WP.39 as modified in para. 106]

(c) When a pay date is stated on the payment order accepted by the originator's bank, the obligation of the originator's bank is that the beneficiary's bank accept the payment order by that date. An intermediary bank that accepts a payment order with a pay date is obligated to use its best efforts to cause the beneficiary's bank to accept the payment order by that date. A beneficiary's bank that accepts a payment order on or before the pay date is obligated to place the funds at the disposal of the beneficiary on that date.

(d) When no pay date is stated on the payment order accepted by the originator's bank, the obligation of the bank is that the beneficiary's bank accept a payment order within an ordinary period of time for that type of order.

(2) A receiving bank that receives a payment order too late to execute it in conformity with the provisions of paragraph (1) nevertheless complies with those provisions if it executes the order on the day received regardless of any execution, value or pay date specified in the order.

(3) A receiving bank that receives a payment order after the receiving bank's cut-off time for that type of payment order is entitled to treat the order as having been received on the following day the bank executes that type of payment order.

(4) A notice that a payment order will not be accepted must be given on the day the decision is made, but no later than the day the receiving bank was required to execute the order.

(5) If a receiving bank is required to take an action on a day when it is not open for the execution of payment orders of the type in question, it must take the required action on the following day it executes that type of payment order.

Article 8. *Revocation and amendment of payment order*

(1) A revocation or amendment of a payment order issued to a receiving bank that is not the beneficiary's bank is effective if it is received in sufficient time for the receiving bank to act on it before the receiving bank has re-transmitted the order.

(2) A sender may require a receiving bank that is not the beneficiary's bank to revoke or amend the payment order the receiving bank has re-transmitted. A sender may also require a receiving bank to instruct the subsequent bank to which it re-transmitted the order to revoke or amend any order that the subsequent bank may in turn have re-transmitted.

(3) A revocation or amendment of a payment order issued to the beneficiary's bank is effective if it is received in time for the bank to act on it before the bank has accepted the order.

(4) A sender may revoke or amend a payment order after the time specified in paragraph (1) or (3) only if the receiving bank agrees.

(5) A sender who has effectively revoked a payment order is not obligated to reimburse the receiving bank [except for costs and fees] and, if the sender has already reimbursed the receiving bank for any part of the payment order, it is entitled to recover from the receiving bank the amount paid.

(6) Neither the death nor incapacity of either the sender or the originator affects the continuing legal validity of a payment order.

(7) The beneficiary's bank may reverse the credit entered to the beneficiary's account to the extent that the credit was in excess of the amount in the originator's payment order, was the result of a duplicate credit arising out of the same payment order by the originator or was entered to an account other than the account specified by the originator.

[(8) A bank has no obligation to release the funds received if ordered by a competent court not to do so [because of fraud or mistake in the funds transfer.]]

CHAPTER III. LIABILITY

Article 9. *Liability of receiving bank*

(1) A receiving bank that fails in its obligations under article 5 is liable therefor to its sender and to the originator.

(2) The originator's bank and each intermediary bank that accepts a payment order is liable to its sender and to the originator for the losses as set out in paragraph (5) of this article caused by the non-execution or the improper execution of the credit transfer as instructed in the originator's payment order. The credit transfer is properly executed if a payment order consistent with the payment order issued by the originator is accepted by the beneficiary's bank within the time required by article 7.

(3) An intermediary bank is not liable under paragraph (2) if the payment order received by the beneficiary's bank was consistent with the payment order received by the intermediary bank and it executed the payment order received by it within the time required by article 7.

(4) The beneficiary's bank is liable

(a) to the beneficiary for its improper execution or its failure to execute a payment order it has accepted to the extent provided by the law governing the [account relationship] [relationship between the beneficiary and the bank], and

(b) to its sender and to the originator for any losses caused by the bank's failure to place the funds at the disposal of the beneficiary in accordance with the terms of a pay date, execution date or value date stated in the order, as provided in article 7.

(5) If a bank is liable under this article to the originator or to its sender, it is obliged to compensate for

(a) loss of interest,

(b) loss caused by a change in exchange rates,

(c) expenses incurred for a new payment order and for reasonable costs of legal representation,

(d) any other loss that may have occurred as a result, if the improper [or late] execution or failure to execute resulted from an act or omission of the bank done with the intent to cause such improper [or late] execution or failure to execute, or recklessly and with knowledge that such improper [or late] execution or failure to execute would probably result.

(6) Banks may vary the provisions of this article by agreement to the extent that it increases or reduces the liability of the receiving bank to another bank and to the extent that the act or omission would not be described by paragraph *(5)(d)*. A bank may agree to increase its liability to an originator that is not a bank but may not reduce its liability to such an originator.

(7) The remedies provided in this article do not depend upon the existence of a pre-existing relationship between the parties, whether contractual or otherwise. These remedies shall be exclusive and no other remedy arising out of other doctrines of law shall be available.

Article 10. *Exemption from liability*

A receiving bank and any bank to which the receiving bank is directly or indirectly liable under article 9 is exempt from liability for a failure to perform any of its obligations if the bank proves that the failure was due to the order of a court or to interruption of communication facilities or equipment failure, suspension of payments by another bank, war, emergency conditions or other circumstances that the bank could not reasonably be expected to have taken into account at the time of the funds transfer or if the bank proves that it could not reasonably have avoided the event or overcome it or its consequences.

CHAPTER IV. CIVIL CONSEQUENCES OF FUNDS TRANSFER

Article 11. *Payment and discharge of monetary obligations; obligation of bank to account holder*

(1) Unless otherwise agreed by the parties, payment of a monetary obligation may be made by a credit transfer to an account of the beneficiary in a bank.

(2) The obligation of the debtor is discharged and the beneficiary's bank is indebted to the beneficiary to the extent of the payment order received by the beneficiary's bank when the payment order is accepted by the beneficiary's bank.

(3) If one or more intermediary banks have deducted charges from the amount of the credit transfer, the obligation is discharged by the amount of those charges in addition to the amount of the payment order as received by the beneficiary's bank. Unless otherwise agreed, the debtor is bound to compensate the creditor for the amount of those charges.

(4) To the extent that a receiving bank has a right of reimbursement from a sender by debit to an account held by the receiving bank for the sender, the account shall be deemed to be debited when the receiving bank accepts the payment order.

CHAPTER V. CONFLICT OF LAWS

Article 12. *Conflict of laws*

(1) Persons who anticipate that they will send and receive payment orders may agree that the law of the State of the sender, of the receiver or of the State in whose currency the payment orders are denominated will govern their mutual rights and obligations arising out of the payment orders. In the absence of agreement, the law of the State of the receiving bank will govern the rights and obligations arising out of the payment order.

(2) In the absence of agreement to the contrary, the law of the State where an obligation is to be discharged governs the mutual rights and obligations of an originator and beneficiary of a credit transfer. If between the parties an obligation could be discharged by credit transfer to an account in any of one or more States or if the transfer was not for the purpose of discharging an obligation, the law of the State where the beneficiary's bank is located governs the mutual rights and obligations of the originator and the beneficiary.

D. Draft model rules on electronic funds transfers: report of the Secretary-General[a] (A/CN.9/WG.IV/WP.39) [Original: English]

CONTENTS

	Page
INTRODUCTION	89
DRAFT PROVISIONS FOR MODEL RULES ON CREDIT TRANSFERS	89
CHAPTER I: GENERAL PROVISIONS	90
Article 1: Sphere of application	90

[a]Working paper submitted to the Working Group on International Payments at its eighteenth session.