

CHAPTER FIVE Presentment, dishonour for non-acceptance or non-payment, and recourse
 Section 1: Presentment for acceptance and dishonour by non-acceptance (articles 46-51)
 Section 2: Presentment for payment and dishonour by non-payment (articles 53-56)
 Section 3: Recourse (articles 57-66)
 A. Protest (articles 57-61)
 B. Notice of dishonour (articles 62-66)

Section 4: Amount payable (articles 66 bis-68)

CHAPTER SIX Discharge
 Section 1: Discharge by payment (articles 70-74 bis)
 Section 2: Discharge of a prior party (article 78)

CHAPTER SEVEN Limitation (Prescription) (article 79)

CHAPTER EIGHT Lost instruments (articles 80-85)

- (f) *Note by the Secretariat: draft Convention on International Bills of Exchange and International Promissory Notes: text of draft articles (set out in A/CN.9/WG.IV/WP.24 and Add. 1) as revised by the Drafting Group (A/CN.9/WG.IV/WP.24/Add.2)**

MODIFICATIONS TO THE TEXT OF THE DRAFT CONVENTION ON BILLS OF EXCHANGE AND INTERNATIONAL PROMISSORY NOTES AS SET OUT IN A/CN.9/WG.IV/WP.24 AND ADD. 1

Article 1, paragraphs 2 (a) and 3 (a)

Replace square brackets by parentheses, and delete footnote appended to paragraph 2 (a).

Article 5, paragraph (7) (a)

Delete the words "circumstances giving rise to".

Article 5, paragraph (8)

Delete the square brackets.

Article 5, new paragraph (11)

Add new paragraph (11), as follows:

[(11) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution even if intended by it to be transferable only in its records and between it and persons designated by it or between such persons.]

Article (X) appended to article 5 (10)

Place article between square brackets.

Article 9, paragraph (6 bis)

Place paragraph (6 bis) after paragraph (5) and renumber paragraph (6 bis) as (5 bis).

"New article" appearing after article 13

Replace the opening words of paragraph (2) "An endorsement may be made", by the words:

"(2) An endorsement may be:"

Article 17, paragraphs (1) and (3)

Add paragraph (1) to read as follows:

"(1) An endorsement must be unconditional".

Delete paragraph (3)

Article 22, paragraph (1)

Add following paragraph as paragraph (1):

"(1) If an endorsement is forged, any party has against the forger, and against the person to whom the instrument was directly transferred by the forger, the right to recover compensation for any damages that he may have suffered because of the forgery."

Article 22, new paragraph (1 bis)

Add following paragraph as paragraph (1 bis):

"The liability of an acceptor, drawee, or maker who pays, or of an endorsee for collection who collects, an instrument on which there is a forged endorsement is not regulated by this Convention."

Article 22, paragraph (2)

After the words "without authority", insert the words "or exceeding his authority".

Article 25, paragraph (1) (a)

Delete the reference to articles "57, 60".

Article 27, paragraph (2)

After the words "A person who signs" insert the words "an instrument".

Article 30, paragraph (2)

The Working Group modified the text as follows:

"(2) The signature of an agent placed by him on an instrument with the authority of his principal and show-

* 13 August 1981.

ing on the instrument that he is signing in a representative capacity for that named principal, or the signature of a principal placed on the instrument by an agent with his authority, impose liability on the principal and not on the agent."

Article 30 bis

Delete at end of article the words "outside the bill".

Article 34, paragraph (1)

After the words "holder or to any", add the word "subsequent".

Article 34 bis

Replace the existing paragraph (1) with the following text:

"(1) The maker engages he will pay to the holder, or to any party who pays the note in accordance with article 67, the amount of the note in accordance with the terms of that note, and any interest and expenses which may be recovered under article 67 or 68."

Article 36, paragraph (2)

Replace the existing paragraph (2) with the following text:

"(2) The acceptor engages that he will pay to the holder, or to any party who pays the bill in accordance with article 67, the amount of the bill in accordance with the terms of his acceptance, and any interest and expenses which may be recovered under article 67 or 68."

Article 41, paragraph (1)

After the words "holder or to any", insert the word "subsequent" and replace the word "bill" by the word "instrument".

Article 44, paragraph (2)

Replace the words "when due" appearing at the end of this paragraph with the words "at maturity".

Article 53 (e)

Replace the words "on one of the two business days which follow" by the words "on the business day which follows".

Article 53 (h)

Delete the words "of which the drawee or acceptor or the maker is a member".

Article 54 (2) (e)

Delete "(e)" and the words following.

Article 56 (1) (c)

Replace the words "the instrument unpaid" by the words "the instrument is unpaid".

Article 58 (3 bis)

Delete this paragraph.

Article 58 (4)

Delete the words "or (3 bis)".

Article 61 (2) (b)

After the words "cause of delay" insert the words "under paragraph (1)".

Article 65 (2)

Invert subparagraphs (a) and (b), and re-letter existing subparagraph (a) as (b), and (b) as (a).

Article 66

Delete the word "directly".

Article 67 (1) (b)

Replace existing subparagraph (b) by the following text:

"(b) After maturity:

"(i) The amount of the instrument with interest, if interest has been stipulated for, to the date of maturity;

"(ii) If interest has been stipulated to be paid after maturity, interest at the rate stipulated, or in the absence of such stipulation, interest at the rate specified in paragraph (2), calculated from the date of presentment on the sum specified in paragraph (1) (b) (i);

"(iii) Any expenses of protest and of the notices given by him;"

Article 67 (2)

Replace the existing paragraph by the following text:

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

Article 67 (3)

Delete the words "to be calculated on the basis of the number of days and in accordance with the custom of that place".

Article 68

Delete the number "(1)" appearing at beginning of text.

Article 70, paragraph (1)

Replace the words "discharged of his liability" by the words "discharged of liability" and insert commas after the words "the holder" and "to himself".

Article 70, paragraph (3)

Replace the words "discharged of his liability" by the words "discharged of liability".

Article 70 (4) (a)

Add following text:

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

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

Article 70 (4) (c)

Add following text:

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

Article 72, paragraphs (1) and (2)

Delete in both paragraphs the word "duly".

Article 74 (2) (b)

Replace the opening words of this subparagraph by the following text:

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

Article 74 bis

Add the following text as new paragraph (2):

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

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

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

"(iii) Paragraphs (3) and (4) of article 74 are applicable where appropriate."

Article 79, paragraph (1)

Add following text as paragraph (1):

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

"(a) Against the maker, or his guarantor, of a note payable on demand, from the date of the note;

"(b) Against the acceptor or the maker or their guarantor of an instrument payable at a definite time, from the date of maturity;

"(c) Against the acceptor of a bill payable on demand, from the date on which it was accepted.

"(d) Against the drawer or an endorser or their guarantor, from the date of protest for dishonour by non-acceptance or non-payment or, where protest is dispensed with, from the date of dishonour."

Article 79, paragraph (2)

Replace the words "articles 67 or 68" by the words "article 67 or 68" and replace the word "after" by the word "from".

Article 82, paragraph (1) (b)

After the words "competent authority" insert the words "or institution".

Article 85

Renumber paragraphs (a) and (b) to read (1) and (2) and in paragraph (1) replace the words "A party who paid" by the words "A party who has paid".

List of headings and subheadings

Title of Chapter One to read as follows: "SPHERE OF APPLICATION AND FORM OF THE INSTRUMENT".

Chapter Four, Section Two, add the following list of articles covered: "(articles 27-45)".

In Chapter Five, section 3, A, Protest, the articles covered should be listed as follows: "(articles 57-59, 61, 60)".

Chapters Seven and Eight to read as follows: "Chapter Seven: Lost instruments (articles 80-85). Chapter Eight: Limitation (Prescription) (article 79)."

- (g) *Note by the Secretariat: draft Convention on International Cheques: text of draft articles 1-66 bis as revised by the Drafting Group (A/CN.9/WG.IV/WP.25)**

Article 1

- (1) This Convention applies to international cheques.
- (2) An international cheque is a written instrument which:
 - (a) Contains, in the text thereof, the words "international cheque (Convention of . . .)";
 - (b) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order or to bearer;
 - (c) Is drawn on a banker;
 - (e) Is dated;
 - (f) Shows that at least two of the following places are situated in different States:
 - (i) The place where the cheque is drawn;
 - (ii) The place indicated next to the name or the signature of the drawer;
 - (iii) The place indicated next to the name of the drawee;
 - (iv) The place indicated next to the name of the payee;
 - (v) The place of payment;
 - (g) Is signed by the drawer.
- (3) Proof that the statements referred to in paragraph (2) (f) of this article are incorrect does not affect the application of this Convention.

Article 3

This Convention applies without regard to whether the places indicated on an international cheque pursuant to paragraph (2) (f) of article 1 are situated in Contracting States.

Article 4

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

* 13 August 1981. See the asterisked footnote to "(d) Note by the Secretariat . . . (A/CN.9/WG.IV/WP.24)" on page 81.

Article 5

In this Convention:

- (1) "Cheque" means an international cheque governed by this Convention;
- (2) "Drawee" means the banker on whom a cheque is drawn;
- (2 bis) "Banker" includes any person or institution assimilated to a banker;
- (3) "Payee" means the person in whose favour the drawer directs payment to be made;
- (5) "Holder" means a person in possession of a cheque in accordance with article 13 bis.
- (6) "Protected holder" means the holder of a cheque which, when he became a holder, was complete and regular on its face, provided that:
 - (a) He was, at that time, without knowledge of a claim to or defence upon the cheque referred to in article 24 or of the fact that it was dishonoured by non-payment;
 - (b) The time-limit provided by article 53 for presentment of that cheque for payment had not then expired.
- (7) "Party" means any person who has signed a cheque as drawer, endorser or guarantor.
- (8) "Signature" includes a signature by stamp, symbol, facsimile, perforation or other mechanical means* and "forged signature" includes a signature by the wrongful or unauthorized use of such means.

[(9) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution, even if intended by it to be transferable only in its records and between it and persons designated by it or between such persons.]

*

[Article (X)]

A Contracting State whose legislation requires that a signature on a cheque be handwritten may, at the time of signature, ratification or accession, make a declaration to the effect that a signature placed on a cheque in its territory must be handwritten. [Footnote in original.]