

(h) *Note by the Secretariat: draft Convention on International Cheques: text of draft articles 67-85, A-F and α and β as revised by the Drafting Group: corrections made by the Drafting Group to draft articles 1-66 (A/CN.9/WG.IV/WP.25/Add.1)**

CORRECTIONS MADE BY THE DRAFTING GROUP TO
DRAFT ARTICLES 1-66 (ISSUED AS A/CN.9/WG.IV/WP.25)

Article 22

In paragraph (1 *bis*) replace the words "provided in article C" by "provided in articles C and F".

TEXT OF DRAFT ARTICLES 67-85, A-F AND α AND β AS
REVISED BY THE DRAFTING GROUP

Article 67

(1) The holder may recover from any party liable the amount of the cheque.

(2) When payment is made after the cheque has been dishonoured, the holder may recover from any party liable the amount of the cheque with interest at the rate specified in paragraph (4) calculated from the date of presentment to the date of payment and any expenses of protest and of the notices given by him.

(4) 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 cheque 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 cheque is payable. In the absence of any such rates, the rate of interest shall be [] per cent per annum.

Article 68

(1) A party who takes up and pays a cheque in accordance with article 67 may recover from the parties liable to him:

(a) The entire sum which he was obliged to pay in accordance with article 67 and has paid;

(b) Interest on that sum at the rate specified in article 67, paragraph (4) from the date on which he made payment;

(c) Any expenses of the notices given by him.

Article 70

(1) A party is discharged of liability on the cheque when he pays the holder, or a party subsequent to himself who has paid the cheque and is in possession thereof, the amount due pursuant to articles 67 and 68.

(3) A party is not discharged of liability if he pays a holder who is not a protected holder and knows at the time of payment that a third person has asserted a valid

claim to the cheque or that the holder acquired the cheque by theft or forged the signature of the payee or an endorsee, or participated in such theft or forgery.

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

(i) To the drawee making such payment, the cheque;

(ii) To any other person making such payment, the cheque, a receipted account and any protest.

(b) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the cheque to him. Withholding payment in these circumstances does not constitute dishonour by non-payment under article 56.

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

Article 71

(1) The holder is not obliged to take partial payment.

(2) If the holder who is offered partial payment does not take it, the cheque is dishonoured by non-payment.

(3) If the holder takes partial payment from the drawee the cheque is to be considered as dishonoured by non-payment as to the amount unpaid.

(4) If the holder takes partial payment from a party to the cheque

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

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

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

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

Article 72

(1) The holder may refuse to take payment in a place other than the place where the cheque was presented for payment in accordance with article 53.

(2) If in such case payment is not made in the place where the cheque was presented for payment in accordance with article 53, the cheque is considered as dishonoured by non-payment.

* 14 August 1981.

Article 74

(1) A cheque must be paid in the currency in which the amount of the cheque is expressed.

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

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

(b) The amount payable is to be calculated according to the rate of exchange indicated on the cheque. Failing such an 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 presentment;

(c) If such a cheque is dishonoured by non-payment, the amount payable is to be calculated:

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

(ii) If no rate of exchange is indicated on the cheque, at the option of the holder, according to the rate of exchange ruling on the date of presentment or on the date of actual payment at the place where the cheque must be presented for payment in accordance with article 53 (g) or at the place of actual payment.

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

Article 74 bis

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

(2) (a) If, by virtue of the application of paragraph (1) of this article, a cheque drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts (or if there is no such rate, according to the appropriate established rate of exchange) on the date of presentment ruling at the place where the cheque must be presented for payment in accordance with article 53 (g).

(b) If such a cheque is dishonoured by non-payment:

(i) 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;

(ii) Paragraph (3) of article 74 is applicable where appropriate.

Article 74 ter

If the drawer countermands the order to the drawee to pay a cheque drawn on him, the drawee is under a duty not to pay.

Article 79

(1) A right of action arising on a cheque can no longer be exercised after four years have elapsed:

(a) Against the drawer or his guarantor, from the date of the cheque;

(b) Against an endorser or his guarantor, from the date of protest for dishonour or, where protest is dispensed with, the date of dishonour.

(2) If a party has paid the cheque in accordance with article 67 or 68 within one year before the expiration of the period referred to in paragraph (1) of this article, such party may exercise his right of action against a party liable to him within one year from the date on which he paid the cheque.

Article 80

(1) When a cheque is lost, whether by destruction, theft or otherwise, the person who lost the cheque has, subject to the provisions of paragraphs (2) and (3) of this article, the same right to payment which he would have had if he had been in possession of the cheque. The party from whom payment is claimed cannot set up as a defence against liability on the cheque the fact that the person claiming payment is not in possession thereof.

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

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

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

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

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

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

(d) If the security cannot be given, the court may order the party from whom payment is claimed to deposit the amount of the lost cheque, and any interest and expenses which may be claimed under article 67 or 68, with the court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

New (3) The person claiming payment of a lost cheque in accordance with the provisions of this article need not give security to the drawer who has inserted in the cheque, or to an endorser who has inserted in his endorsement, such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import.

Article 81

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

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

(3) Failure to notify renders the party who has paid the lost cheque liable for any damages which the person whom he paid may suffer from such failure, provided that the damages do not exceed the amount referred to in article 67 or 68.

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

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

Article 82

(1) A party who has paid a lost cheque in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the cheque, or who, by reason of the loss of the cheque, then loses his right to recover from any party liable to him, has the right:

(a) If security was given, to realize the security; or

(b) If the amount was deposited with the court or other competent authority or institution, to reclaim the amount so deposited.

(2) The person who has given security in accordance with the provisions of paragraph (2) (b) of article 80 is entitled to obtain release of the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the cheque is lost.

Article 83

A person claiming payment of a lost cheque duly effects protest for dishonour by non-payment by the use of a written statement that satisfies the requirements of article 80, paragraph (2) (a).

Article 84

A person receiving payment of a lost cheque in accordance with article 80 must deliver to the party paying the written statement required under article 80, paragraph (2) (a), receipted by him and any protest and a receipted account.

Article 85

(1) A party who has paid a lost cheque in accordance with article 80 has the same rights which he would have had if he had been in possession of the cheque.

(2) Such party may exercise his rights only if he is in possession of the receipted written statement referred to in article 84.

Article A

(1) A cheque is crossed if it bears across its face two parallel transverse lines.

(2) A crossing is general if it consists of the two lines only or if between the two lines the word "banker" or an equivalent term or the words "and Company" or any abbreviation thereof is inserted; it is special if the name of a banker is so inserted.

(3) A cheque may be crossed generally or specially by the drawer or the holder.

(4) The holder may convert a general crossing into a special crossing.

(5) A special crossing may not be converted into a general crossing.

(6) The banker to whom a cheque is crossed specially may again cross it specially to another banker for collection.

Article B

If a cheque shows on its face the obliteration either of a crossing or of the name of the banker to whom it is crossed, the obliteration is considered as not having taken place.

Article C

(1) (a) A cheque which is crossed generally is payable only to a banker or to a customer of the drawee;

(b) A cheque which is crossed specially is payable only to the banker to whom it is crossed or, if such banker is the drawee, to his customer;

(c) A banker may not take a crossed cheque except from his customer or from another banker and may not collect such a cheque except for such a person.

(2) The drawee who pays, or the banker who takes or collects, a crossed cheque in violation of the provisions of paragraph (1) of this article incurs liability for any damages which a person may have suffered as a result of such violation, provided that such damages do not exceed the amount of the cheque.

Article E

If the crossing on a cheque contains the words "not negotiable" the transferee becomes a holder but cannot become a protected holder. However, such transferee may acquire the rights of a protected holder under article 25 *bis*.

Article F

(1) (a) The drawer or the holder of a cheque may prohibit its payment in cash by writing transversally across the face of the cheque the words "payable in account" or words of similar import;

(b) In such case the cheque may only be paid by the drawee by means of a book-entry.

(2) The drawee who pays such a cheque otherwise than by means of a book-entry incurs liability for any damages which a person may have suffered as a result thereof, provided that such damages do not exceed the amount of the cheque.

(3) If a cheque shows on its face the obliteration of the words "payable in account", the obliteration is considered as not having taken place.

Article a

If a cheque is drawn against insufficient funds, it is nevertheless valid as a cheque.

Article β

(1) A cheque which bears a date other than the date on which it was drawn is nevertheless valid as a cheque.

(2) If a cheque is presented before its stated date, refusal by the drawee to pay does not constitute dishonour by non-payment under article 56.

LIST OF HEADINGS AND SUBHEADINGS (CHEQUES)

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CHAPTER SEVEN	Crossed Cheques and Cheques Payable in Account Section 1: Crossed cheques (articles A-E) Section 2: Cheques payable in account (article F)
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CHAPTER NINE	Limitation (Prescription) (article 79)