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DRAFT CONVENTION ON INTERNATIONAL CHEQUES

Text of draft articles as adopted by the Working Group  
on International Negotiable Instruments

Note by the Secretariat

DRAFT CONVENTION ON INTERNATIONAL CHEQUES

CHAPTER ONE. SPHERE OF APPLICATION AND FORM OF THE CHEQUE

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;

(d) Is dated;

(e) 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;

(f) Is signed by the drawer.

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

Article 2

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

CHAPTER TWO. INTERPRETATION

Section 1. General provisions

Article 3

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

Article 4

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

Article 5

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.

Article 6

In this Convention:

- (1) "Cheque" means an international cheque governed by this Convention;
- (2) "Drawee" means the banker on whom a cheque is drawn;
- (3) "Banker" includes any person or institution assimilated to a banker;
- (4) "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 16.
- (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 27 or of the fact that it was dishonoured by non-payment;
  - (b) The time-limit provided by article 43 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 7

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

### Section 2. Interpretation of formal requirements

#### Article 8

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

(a) According to a rate of exchange indicated on the cheque or to be determined as directed by the cheque; or

(b) In a currency other than the currency in which the amount of the cheque is expressed.

#### Article 9

Any stipulation on a cheque that it is to be paid with interest is deemed not to have been written.

#### Article 10

(1) If there is a discrepancy between the amount of the cheque expressed in words and the amount expressed in figures, the amount of the cheque is the amount expressed in words.

\*

#### 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.

(2) If the amount of the cheque is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made as indicated on the cheque and the specified currency is not identified as the currency of any particular State, the currency is to be considered as the currency of the State where payment is to be made.

#### Article 11

(1) A cheque is always payable on demand. It is so payable:

(a) If it states that it is payable at sight or on demand or on presentment or if it contains words of similar import; or

(b) If no time of payment is expressed.

(2) A stipulation on a cheque that it is payable at a definite time is deemed not to have been written.

#### Article 12

(1) A cheque may:

(a) Be drawn by the drawer on himself or be drawn payable to his order;

(b) Be drawn by two or more drawers;

(c) Be payable to two or more payees.

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

### Section 3. Completion of an incomplete cheque

#### Article 13

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

(2) When such a cheque is completed otherwise than in accordance with an agreement entered into:

(a) A party who signed the cheque before the completion may invoke the non-observance of the agreement as a defence against a holder, provided the holder had knowledge of the non-observance of the agreement when he became a holder;

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

CHAPTER THREE. TRANSFER

Article 14

A cheque is transferred:

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

(b) By mere delivery of the cheque if it is drawn payable to bearer or if the last endorsement is in blank.

Article 15

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

(2) An endorsement may be:

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

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

Article 16

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

(a) In possession of a cheque drawn payable to bearer; or

(b) The payee in possession of the cheque; or

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

(2) When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to be an endorsee by the endorsement in blank.

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

Article 17

The holder of a cheque on which the last endorsement is in blank may:

- (a) Further endorse the cheque either in blank or to a specified person; or
- (b) Convert the blank endorsement into a special endorsement by indicating therein that the cheque is payable to himself or to some other specified person; or
- (c) Transfer the cheque in accordance with paragraph (b) of article 14.

Article 18

When the drawer of a cheque payable to a payee or to his order has inserted in the cheque, or an endorser in his endorsement, such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the transferee does not become a holder except for purposes of collection.

Article 19

- (1) An endorsement must be unconditional.
- (2) A conditional endorsement transfers the cheque whether or not the condition is fulfilled.

Article 20

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

Article 21

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

Article 22

- (1) When an endorsement contains the words "for collection", "for deposit", "value in collection", "by procuration", "pay any bank", or words of similar import, authorizing the endorsee to collect the cheque (endorsement for collection), the endorsee:
  - (a) May only endorse the cheque for purposes of collection;
  - (b) May exercise all the rights arising out of the cheque;

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

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

Article 23

(1) The holder of a cheque may transfer it to a prior party in accordance with article 14; nevertheless, in the case where the transferee was a prior holder of the cheque, no endorsement is required and any endorsement which would prevent him from qualifying as a holder may be struck out.

(2) The endorsement to the drawee operates only as an acknowledgement that the endorser has received from the drawee the amount of the cheque except in the case where the drawee has several establishments and the endorsement is made in favour of an establishment other than that on which the cheque has been drawn.

Article 24

A cheque may be transferred in accordance with article 14 after the expiration of the period of time for presentment.

Article 25

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

(2) Except to the extent provided in articles 70 and 72, the liability of a party or of the drawee who pays, or of an endorsee for collection who collects, a cheque on which there is a forged endorsement is not regulated by this Convention.

(3) For the purposes of this article, an endorsement placed on a cheque by a person in a representative capacity without authority or exceeding his authority has the same effects as a forged endorsement.



CHAPTER FOUR. RIGHTS AND LIABILITIES

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

Article 26

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

(2) The holder is entitled to transfer the cheque in accordance with article 14.

Article 27

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

(a) Any defence available under this Convention;

(b) Any defence based on an underlying transaction between himself and the drawer or a previous holder or arising from the circumstances as a result of which he became a party;

(c) Any defence to contractual liability based on a transaction between himself and the holder;

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

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

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

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

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

Article 28

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

(a) Defences under articles 31 (1), 32, 33 (1), 34 (3), 45 and 79 of this Convention;

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

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

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

#### Article 29

(1) The transfer of a cheque by a protected holder vests in any subsequent holder the rights to and upon the cheque which the protected holder had, except where such subsequent holder participated in a transaction which gives rise to a claim to or a defence upon the cheque.

(2) If a party pays the cheque in accordance with article 59 and the cheque is transferred to him, such transfer does not vest in that party the rights to and upon the cheque which any previous protected holder had.

#### Article 30

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

### Section 2. The liability of the parties

#### A. General provisions

##### Article 31

(1) Subject to the provisions of articles 32 and 34, a person is not liable on a cheque unless he signs it.

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

##### Article 32

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

Article 33

(1) If a cheque has been materially altered:

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

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

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

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

Article 34

(1) A cheque may be signed by an agent.

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

(3) A signature placed on a cheque by a person as agent but without authority to sign or exceeding his authority or by an agent with authority to sign but not showing on the cheque that he is signing in a representative capacity for a named person, or showing on the cheque that he is signing in a representative capacity but not naming the person whom he represents, imposes liability thereon on the person signing and not on the person whom he purports to represent.

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

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

Article 35

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

Article 36

(1) Any statement written on a cheque indicating certification, confirmation, acceptance, visa or any other equivalent expression has only the effect to ascertain the existence of funds and prevents the withdrawal of such funds by the drawer, or the use of such funds by the drawee for purposes other than payment of the cheque bearing such a statement, before the expiration of the time-limit for presentment.

(2) However, a Contracting State may provide that a drawee may accept a cheque and determine the legal effects thereof. Such acceptance must be effected by the signature of the drawee accompanied by the word "accepted".

B. The drawer

Article 37

(1) The drawer engages that upon dishonour of the cheque by non-payment, and upon any necessary protest, he will pay to the holder, or to any subsequent party who pays the cheque in accordance with article 59, the amount of the cheque, and any interest and expenses which may be recovered under article 59 or 60.

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

C. The endorser

Article 38

(1) The endorser engages that upon dishonour of the cheque by non-payment, and upon any necessary protest, he will pay to the holder, or to any subsequent party who pays the cheque in accordance with article 59, the amount of the cheque, and any interest and expenses which may be recovered under article 59 or 60.

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

Article 39

(1) Any person who transfers a cheque by mere delivery is liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to such transfer:

(a) A signature on the cheque was forged or unauthorized; or

(b) The cheque was materially altered; or

- (c) A party has a valid claim or defence against him; or
- (d) The cheque was dishonoured by non-payment.

(2) The damages recoverable under paragraph (1) may not exceed the amount referred to in article 59 or 60.

(3) Liability on account of any defect mentioned in paragraph (1) is incurred only to a holder who took the cheque without knowledge of such defect.

#### D. The guarantor

##### Article 40

(1) Payment of a cheque may be guaranteed, as to the whole or part of its amount, for the account of a party by any person who may or may not have become a party.

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

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

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

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

(b) A signature alone on the back of the cheque is an endorsement. A special endorsement of a cheque made payable to bearer does not convert the cheque into an order instrument.

(5) A guarantor may specify the person for whom he has become guarantor. In the absence of such specification, the person for whom he has become guarantor is the drawer.

##### Article 41

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

##### Article 42

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

CHAPTER FIVE. PRESENTMENT, DISHONOUR BY NON-PAYMENT, AND RECOURSE

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

Article 43

A cheque is duly presented for payment if it is presented in accordance with the following rules:

- (a) The holder must present the cheque to the drawee on a business day at a reasonable hour;
- (b) A cheque must be presented for payment within 120 days of its stated date;
- (c) A cheque must be presented for payment:
  - (i) At the place of payment specified on the cheque; or
  - (ii) If no place of payment is specified, at the address of the drawee indicated on the cheque; or
  - (iii) If no place of payment is specified and the address of the drawee is not indicated, at the principal place of business of the drawee;
- (d) A cheque may be presented for payment at a clearing-house.

Article 44

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

(2) Presentment for payment is dispensed with:

- (a) If the drawer, an endorser or guarantor has waived presentment expressly or by implication; such waiver:
  - (i) If made on the cheque by the drawer, binds any subsequent party and benefits any holder;
  - (ii) If made on the cheque by a party other than the drawer, binds only that party but benefits any holder;
  - (iii) If made outside the cheque, binds only the party making it and benefits only a holder in whose favour it was made.
- (b) If the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment.

Article 45

If a cheque is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable thereon. However, if a cheque is not duly presented because of delay in making presentment, the drawer is not discharged of liability except to the extent of the loss suffered because of the delay.

Article 46

(1) A cheque is considered to be dishonoured by non-payment:

(a) When payment is refused upon due presentment, or when the holder cannot obtain the payment to which he is entitled under this Convention, or as regards the drawer only, if presentment of the cheque, otherwise duly made, is delayed and payment is refused;

(b) If presentment for payment is dispensed with pursuant to article 44 (2) and the cheque is unpaid.

(2) If a cheque is dishonoured by non-payment, the holder may, subject to the provisions of article 48, exercise a right of recourse against the drawer, the endorsers and their guarantors.

Article 47

If a cheque is presented before its stated date, refusal by the drawee to pay does not constitute dishonour by non-payment under article 46.

Section 2. Recourse

A. Protest

Article 48

If a cheque has been dishonoured by non-payment, the holder may exercise a right of recourse only after the cheque has been duly protested for dishonour in accordance with the provisions of articles 49 to 51.

Article 49

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

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

(b) The place of protest; and

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

(2) A protest may be made:

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

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

(3) Unless the cheque stipulates that protest must be made, a protest may be replaced by a declaration written on the cheque and signed and dated by the drawee; the declaration must be to the effect that payment is refused.

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

#### Article 50

Protest for dishonour of a cheque by non-payment must be made on the day on which the cheque is dishonoured or on one of the two business days which follow.

#### Article 51

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

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

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

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

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

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

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

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

(d) If presentment for payment is dispensed with in accordance with article 44 (2).



Article 52

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

(2) Delay in protesting a cheque for non-payment does not discharge the drawer or his guarantor of liability except to the extent of the loss suffered by the delay.

B. Notice of dishonour

Article 53

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

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

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

Article 54

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

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

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

Article 55

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

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

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

Article 56

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

(2) Notice of dishonour is dispensed with:

- (a) If after the exercise of reasonable diligence notice cannot be given;
- (b) If the drawer, an endorser or guarantor has waived notice of dishonour expressly or by implication; such waiver:

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

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

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

- (c) As regards the drawer of a cheque, if the drawer and the drawee are the same person.

#### Article 57

Failure to give notice of dishonour renders a person who is required to give such notice under article 53 to a party who is entitled to receive such notice liable for any damages which that party may suffer from such failure, provided that such damages do not exceed the amount referred to in article 59 or 60.

### Section 3. Amount payable

#### Article 58

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

#### Article 59

(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 (3) calculated from the date of presentment to the date of payment and any expenses of protest and of the notices given by him.

(3) 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 60

A party who pays a cheque in accordance with article 59 may recover from the parties liable to him:

- (a) The entire sum which he was obliged to pay in accordance with article 59 and has paid;
- (b) Interest on that sum at the rate specified in article 59, paragraph (3), from the date on which he made payment;
- (c) Any expenses of the notices given by him.

CHAPTER SIX. DISCHARGE

Section 1. Discharge by payment

Article 61

(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 article 59 or 60.

(2) 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.

(3) (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 46.

(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 62

(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 therefor 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 63

(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 43.

(2) If in such case payment is not made in the place where the cheque was presented for payment in accordance with article 43, the cheque is considered as dishonoured by non-payment.

Article 64

(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:

(i) Ruling at the place where the cheque must be presented for payment in accordance with article 43 (c), if the specified currency is that of that place (local currency); or

(ii) If the specified currency is not that of that place, according to the usages of the place where the cheque must be presented for payment in accordance with article 43 (c).

(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 43 (c) 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 65

(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 43 (c).

(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 on the date of presentment or on the date of actual payment;

(ii) Paragraph (3) of article 64 is applicable where appropriate.

#### Article 66

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.

Section 2. Discharge of a prior party

Article 67

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

(2) Payment by the drawee of the whole or a part of the amount of the cheque to the holder, or to any party who has paid the cheque in accordance with article 59, discharges all parties of their liability to the same extent.

CHAPTER SEVEN. CROSSED CHEQUES AND CHEQUES PAYABLE IN ACCOUNT

Section 1. Crossed cheques

Article 68

(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 69

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 70

(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 71

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 29.

### Section 2. Cheques payable in account

#### Article 72

(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.

### CHAPTER EIGHT. LOST CHEQUES

#### Article 73

(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 59 or 60, 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.

(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 74

(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 59 or 60.

(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 75

(1) A party who has paid a lost cheque in accordance with the provisions of article 73 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 73 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 76

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 73, paragraph (2) (a).

#### Article 77

A person receiving payment of a lost cheque in accordance with article 73 must deliver to the party paying the written statement required under article 73, paragraph (2) (a), receipted by him and any protest and a receipted account.

#### Article 78

(1) A party who has paid a lost cheque in accordance with article 73 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 77.

### CHAPTER NINE. LIMITATION (PRESCRIPTION)

#### 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 59 or 60 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.