

2. *Report of the Secretary-General, annex (A/CN.9/WG.IV/WP.2): \* text of the Draft Uniform Law on International Bills of Exchange and International Promissory Notes*

**Part One. Sphere of application; form**

*Article 1*

(1) This Law shall apply to international bills of exchange and to international promissory notes.

(2) An international bill of exchange is a written instrument which

(a) Contains, in the text thereof, the words "Pay against this International Bill of Exchange, drawn subject to the Convention of ——" (or words of similar import); and

(b) Contains an unconditional order whereby one person (the drawer) directs another person (the drawee) to pay a definite sum of money to a specified person (the payee) or to his order; and

(c) Is payable on demand or at a definite time; and

(d) Is signed by the drawer; and

(e) Shows that it is drawn in a country other than the country of the drawee or of the payee or of the place where payment is to be made.

(3) An international promissory note is a written instrument which

(a) Contains, in the text thereof, the words "Against this International Promissory Note, made subject to the Convention of . . . , I promise to pay . . ." (or words of similar import); and

(b) Contains an unconditional promise whereby one person (the maker) engages to pay a definite sum of money to a specified person (the payee) or to his order; and

(c) Is payable on demand or at a definite time; and

(d) Is signed by the maker; and

(e) Shows that it is made in a country other than the country of the payee or of the place where payment is to be made.

*Article 2*

The incorrectness of statements made on an instrument for the purpose of paragraph (2) (e) or (3) (e) of article 1 shall not affect the application of this Law.

*Article 3*

This Law shall apply without regard to whether the

countries indicated on an international bill of exchange or an international promissory note pursuant to paragraph (2) (e) or (3) (e) of article 1 are Contracting States.

**Part Two. Interpretation**

SECTION 1: GENERAL

*Article 4*

In interpreting and applying the provisions of this Law regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

*Article 5*

In this Law:

(1) "Bearer" means a person in possession of a bill or of a note endorsed in blank;

(2) "Bill" means an international bill of exchange governed by this Law;

(3) "Note" means an international promissory note governed by this Law;

(4) "Instrument" means an international bill of exchange or an international promissory note governed by this Law;

(5) (a) "Endorsement" means a signature or a signature accompanied by a statement designating the person to whom the instrument is payable, which is placed on the instrument by the payee, by an endorsee from the payee, or by any person who is designated under an uninterrupted series of such endorsements. An endorsement which consists solely of the signature of the endorser means that the instrument is payable to any person in possession thereof;

(b) "Endorsement in blank" means an endorsement which consists solely of the signature of the endorser or which includes a statement to the effect that the instrument is payable to any person in possession thereof;

(c) "Special endorsement" means an endorsement which specifies the person to whom the instrument is payable;

(6) "Holder" means the payee or the endorsee of an instrument who is in possession thereof;

(7) "Issue" means the first transfer of an instrument to a person who takes it as a holder;

(8) "Party" means a party to an instrument;

(9) "Protected holder" means the holder of an instrument which, on the face of it, appears to be complete and regular and not overdue, provided that such holder was, when taking the instrument without knowledge of any claims or defences affecting the instrument or of the fact that it was dishonoured.

\* 21 November 1972. This text is similar to the text of the Draft Uniform Law on International Bills of Exchange (A/CN.9/67; UNCITRAL Yearbook, vol. III: 1972, part two, II, 1), except that its provisions now extend to promissory notes (see decision by UNCITRAL at its fourth session, UNCITRAL Yearbook, vol. III: 1972, part one, II, A, para. 61 (2) (c)). For this reason the commentary on the Draft Uniform Law (A/CN.9/WG.IV/WP.2) was not reproduced here.

*Article 6*

For the purpose of this Law, a person is considered to have "knowledge" of a fact if he has actual knowledge thereof [or if the absence of knowledge thereof is due to [gross] negligence on this part] [or if he has been informed thereof or if the fact appears from the face of the instrument].

## SECTION 2. INTERPRETATION FOR FORMAL REQUIREMENTS

*Article 7*

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

- (a) With interest; or
- (b) By stated instalments; or
- (c) According to an indicated rate of exchange or according to a rate of exchange to be determined as directed by the instrument.

*Article 8*

(1) If there is a discrepancy between the amount of the instrument expressed in words and the amount expressed in figures, the sum payable shall be the amount expressed in words.

[(2) If the amount of the instrument is specified in a currency having the same designation but a different value in the country where it was drawn or made and the country where payment is to be made, the designation shall be considered to be in the currency of the country where payment is to be made [provided that the place where payment is to be made is indicated on the instrument].]

(3) Where an instrument states that it is to be paid with interest, without specifying the date from which interest is to run, interest shall run from the date of the instrument [and if the instrument is undated, from the issue thereof].

(4) Where an instrument states that it is to be paid with interest, without specifying the rate, simple interest at the rate of [five] per cent per annum shall be payable.

*Article 9*

- (1) An instrument is payable on demand
  - (a) If it states that it is payable on demand or at sight or on presentment or if it contains words of similar import;
  - (b) If no time for payment is expressed.
- (2) An instrument which is accepted or endorsed or guaranteed after maturity is an instrument payable on demand as regards the acceptor, the endorser or the guarantor.
- (3) A bill is payable at a definite time if it states that it is payable
  - (a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the bill; or

(b) At a fixed period after sight; or

[(c) By instalments at successive dates, even when it is stipulated in the bill that upon default in payment of any instalment the unpaid balance shall become due immediately.]

(4) A note is payable at a definite time if it states that it is payable

(a) on a stated date or at a fixed period after a stated date or as a fixed period after the date of the note; [or]

[(b) by instalments at successive dates, even when it is stipulated in the note that upon default in payment of any instalment the unpaid balance shall become due immediately.]

(5) The time of payment of an instrument payable at a fixed period after date is determined by reference to the date stated on the instrument regardless of whether instrument is ante-dated or post-dated.

*Article 10*

- (1) A bill may
  - (a) Be drawn upon two or more drawees,
  - (b) Be signed by two or more drawers,
  - (c) Be payable to two or more payees.
- (2) A note may
  - (a) Be made by two or more makers,
  - (b) Be payable to two or more payees.
- (3) If an instrument is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the instrument may exercise the rights of a holder. In any other case the instrument is payable to all of them and the rights of a holder can only be exercised by all of them.

## SECTION 3. COMPLETION OF AN INCOMPLETE INSTRUMENT

*Article 11*

- (1) The possessor of a writing which
  - (a) Contains, in the text thereof, the words "pay against this international bill of exchange, drawn subject to the Convention of . . .", or the words "against this international promissory note, made subject to the Convention of . . . I promise to pay . . ." (or words of similar import), and
  - (b) Is signed by the drawer or the maker, but which lacks elements pertaining to one or more of the other requirements set out in article 1 (2) or 1 (3) shall be presumed to have received authority from the drawer or the maker to insert such elements, and the instrument so completed is effective as a bill or as a note;
- (2) When such a writing is completed otherwise than in accordance with the authority given, the lack of authority cannot be set up as a defence against a holder who took the instrument without knowledge of the lack of authority.

**Part Three. Transfer and negotiation***Article 12*

The transfer of an instrument vests in the transferee the rights to and upon the instrument that the transferor had.

*Article 13*

(1) An instrument is negotiated when it is transferred

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

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

(2) Negotiation shall be effective to render the transferee a holder even though the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would subject the transferee to claims to the instrument or to defences as to liability thereon.

*Article 14*

Where an instrument is transferred without an endorsement necessary to make the transferee a holder, the transferee is entitled to require the transferor to endorse the instrument to him.

*Article 15*

The holder of an instrument endorsed in blank may convert the blank endorsement into a special endorsement by indicating therein that the instrument is payable to himself or to some other person.

*Article 16*

When the drawer, the maker or an endorser has inserted in the instrument or in the endorsement, words prohibiting transfer, such as "not transferable", "not negotiable", "not to order", or words of similar import, the instrument cannot be negotiated except for purposes of collection.

*Article 17*

An endorsement purporting to negotiate an instrument subject to a condition shall be effective to negotiate the instrument irrespective of whether the condition is fulfilled.

*Article 18*

An endorsement purporting to transfer only a part of the sum payable shall be ineffective as an endorsement.

*Article 19*

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

*Article 20*

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

(a) May only endorse the instrument on the same terms; and

(b) May exercise all the rights arising out of the instrument and shall be subject to all claims and defences which may be set up against the endorser.

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

*Article 21*

Where an instrument is transferred or negotiated to a prior party, he may, subject to the provisions of this Law, re-issue or further transfer or negotiate the instrument.

*Article 22*

(1) A person who acquires an instrument through what appears on the face of the instrument to be an uninterrupted series of endorsements shall be a holder even if one of the endorsements was forged or was signed by an agent without authority, provided that such person was without knowledge of the forgery or of the absence of authority.

(2) Where an endorsement was forged or was signed by an agent without authority, the drawer or the maker or the person whose endorsement was forged or was signed by an agent without authority shall have against the forger or such agent and against the person who took the instrument from the forger or from such agent the right to recover compensation for any damage that he may have suffered because of the operation of paragraph (1) of this article.

(3) Subject to the provisions of article 28 (a) and (b), a forged endorsement or an endorsement by an agent without authority shall not impose any liability on the person whose signature was forged or on behalf of whom the agent purported to act when endorsing the instrument.

**Part Four. Rights and liabilities****SECTION 1. THE RIGHTS OF A HOLDER  
AND A PROTECTED HOLDER***Article 23*

A person who signs an instrument is liable to the holder thereof in accordance with the provisions of this Law.

*Article 24*

(1) The rights on an instrument of a holder who is not a protected holder are subject to

(a) Any valid claim to the instrument on the part of any person; and

(b) Any defence of any party which would be available under a contract or available under this Law.

(2) A party may not avoid liability to a remote holder on the ground that he has a defence against his immediate party if such defence is based on legal relations not connected with the instrument.

(3) A party may not avoid liability to a holder on the ground that a third person has a valid claim to the instrument, unless such person himself has claimed the instrument from the holder and informed such party thereof.

#### Article 25

(1) The rights on an instrument of a protected holder are free from

(a) Any claim to the instrument on the part of any person; and

(b) Any defence of any party, except defences based on circumstances which render the obligation on the instrument of such party null and void; and

(c) Any defence based on discharge or on the absence of liability on the ground that the instrument was dishonoured by non-acceptance or by non-payment or was not duly protested.

(2) The transfer of an instrument by a protected holder shall not vest in the transferee the rights of a protected holder if the transferee has participated in a transaction which gives rise to a claim to, or a defence upon, the instrument.

#### Article 26

(1) Every holder is presumed to be a protected holder.

(2) Where it is established that a defence exists, the holder has the burden of establishing that he is a protected holder.

### SECTION 2. LIABILITY OF THE PARTIES

#### A. GENERAL

#### Article 27

(1) A person is not liable on an instrument unless he signs it.

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

(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.

#### Article 28

A forged signature on an instrument does not impose any liability thereon on the person whose signature was forged. Nevertheless, such person shall be liable

(a) If he has ratified the signature;

(b) To a holder without knowledge of the forgery if, through his conduct he has given such holder or an intervening endorser reason to believe that the signature was his own or was made by an agent with authority.

#### Article 29

(1) Where an instrument has been materially altered:

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

(b) Parties who have signed the instrument before the material alteration shall be liable thereon according to the terms of the original text, provided that:

(i) A party who has himself made, authorized, or assented to, the material alteration shall be liable according to the terms of the altered text; and

(ii) A party who through his conduct facilitated the material alteration shall be liable to a holder without knowledge of the alteration according to the terms of the altered text.

(2) For the purpose of this Law, any alteration is material which modifies the written undertaking on the instrument of any party in any respect.

#### Article 30

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

(2) The signature on an instrument by an agent, with authority to sign, and showing on the instrument that he is signing in a representative capacity, imposes liability thereon on the person represented and not on the agent.

(3) The signature on an instrument by an agent without authority to sign, or by an agent with authority to sign but not showing on the instrument that he is signing in a representative capacity, imposes liability on the instrument on such agent and not on the person whom the agent purports to represent.

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

#### Article 31

(1) Any party to a bill and any party to a note [except the maker] may exclude or limit his liability by an express stipulation on the instrument.

(2) Such exclusion or limitation of liability shall be effective only with respect to the party making the stipulation.

#### Article 32

A person signing an instrument shall be liable thereon as an endorser unless the instrument clearly indicates that he signed in some other capacity.

#### Article 33

(1) All drawers, acceptors, endorsers and guarantors of a bill are jointly and severally liable thereon.

(2) All makers, endorsers and guarantors of a note are jointly and severally liable thereon.

## B. THE DRAWER

*Article 34*

The drawer engages that upon dishonour of the bill by non-acceptance or non-payment and upon any necessary protest he will pay the amount of the bill, and any interest and expenses which may be claimed under article 67 (b) or 68, to the holder or to any party subsequent to himself who is in possession of the bill and who is discharged from liability thereon in accordance with articles 69 (2), 70, 71 or 76.

## C. THE MAKER

*Article 34 bis*

The maker engages that he will pay to the holder

- (a) At maturity, the amount of the note;
- (b) After maturity, the amount of the note and any interest and expenses which may be claimed under article 67 (b) or 68.

## D. THE DRAWEE AND THE ACCEPTOR

*Article 35*

- (1) The drawee is not liable on a bill until he accepts it.
- (2) The drawing of a bill or its endorsement does not of itself operate as a transfer or assignment to the holder of funds in the hands of the drawee.

*Article 36*

The acceptor engages that he will pay to the holder:

- (a) At maturity, the amount of the bill;
- (b) After maturity, the amount of the bill and any interest and expenses which may be claimed under article 67 (b) or 68.

*Article 37*

An acceptance must be written on the bill and may be effected either by the drawee's signature alone or by his signature accompanied by the word "accepted" or by words of similar import.

*Article 38*

- (1) A bill may be accepted
  - (a) Before it has been signed by the drawer, or while otherwise incomplete;
  - (b) Before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.
- (2) Where a bill drawn payable at a fixed period after sight is accepted and the acceptor has not indicated the date of his acceptance, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.

(3) Where a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder shall be entitled to have the acceptance dated as of the date of presentment to the drawee for acceptance.

*Article 39*

- (1) An acceptance may be either general or qualified.
- (2) By a general acceptance the drawee engages to pay the bill according to its terms.
- (3) By a qualified acceptance the drawee engages to pay the bill according to terms expressly stated in his acceptance. An acceptance is qualified if, *inter alia*, it is
  - (a) Conditional, in that the acceptance states that payment by the acceptor will be dependent upon the fulfilment of a condition therein stated;
  - (b) Partial, in that the acceptance related to only part of the amount of the bill;
  - (c) Qualified as to place, in that the acceptance indicates a place of payment other than the place of payment indicated on the bill or, in the absence of such indication, other than the address indicated on the bill as that of the drawee;
  - (d) Qualified as to time;
  - (e) An acceptance by one or more of the drawees but not by all.

*Article 40*

- (1) The holder may refuse a qualified acceptance other than a partial [or local] acceptance. Upon such refusal the bill is dishonoured by non-acceptance.
- (2) Where a holder takes a qualified acceptance other than an acceptance which is partial [or is qualified as to place], the drawer and any endorser and guarantor who do not affirmatively assent shall be discharged of liability on the bill.
- (3) Where the drawee gives a partial acceptance, the bill is dishonoured by non-acceptance as to the part of the amount not accepted.

## E. THE ENDORSER

*Article 41*

The endorser engages that upon dishonour of the bill by non-acceptance or non-payment or upon dishonour of the note by non-payment, and upon any necessary protest, he will pay the amount of the instrument, and any interest and expenses which may be claimed under articles 67 or 68, to the holder or to any party subsequent to himself who is in possession of the instrument and who is discharged from liability thereon in accordance with articles 69 (2), 70, 71 or 76.

*Article 42*

- (1) Any person who negotiates an instrument shall be liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to the negotiation

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

(b) The instrument was materially altered; or

(c) A party has a valid claim or defence; or

(d) The bill is dishonoured by non-acceptance or non-payment or the note is dishonoured by non-payment.

(2) Liability on account of any defect mentioned in paragraph (1) shall be incurred only to a holder who took the instrument without knowledge of such defect.

#### F. THE GUARANTOR

##### Article 43

(1) Payment of an instrument may be guaranteed, as to the whole or part of its amount, by any person who may or may not be a party.

(2) A guarantee must be written on the instrument or on a slip affixed thereto. It is expressed by the words: "guaranteed", "aval", "good as *aval*", or by words of similar import, accompanied by the signature of the guarantor.

(3) A guarantor may specify the party whose payment he guarantees.

(4) In the absence of such specification, the person guaranteed shall be the drawer, in the case of a bill, or the maker, in the case of a note.

##### Article 44

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

(2) The guarantor shall be liable on the instrument even when the party for whom he has become guarantor is not liable thereon, unless that party's lack of liability is apparent from the face of the instrument.

##### Article 45

The guarantor, when he pays the instrument, shall have rights thereon against the party guaranteed and against those who are liable thereon to that party.

### Part Five. Presentment, dishonour and recourse

#### SECTION 1. PRESENTMENT FOR ACCEPTANCE

##### Article 46

(1) The holder must present a bill for acceptance

(a) When the drawer or an endorser or a guarantor has stipulated on the bill that it shall be so presented;

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

[(c) When the bill is drawn payable elsewhere than at the residence or place of business of the drawee.]

(2) The holder may present for acceptance any other bill.

##### Article 47

(1) The drawer or an endorser or a guarantor may stipulate on the bill that it shall not be presented for acceptance or that it shall not be presented before a specified date or before the occurrence of a specified event.

(2) Where a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1) and acceptance is refused, the bill is not thereby dishonoured in respect of the party making the stipulation.

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

##### Article 48

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

(a) The holder must present the bill to the drawee.

(b) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise.

(c) Where the drawee is dead, presentment may be made to the person or authority who, under the applicable law is entitled to administer his estate.

(d) Where the drawee is in the course of insolvency proceedings, presentment may be made to a person who under the applicable law is authorized to act in his place.

(e) Where a bill is drawn payable on, or at a fixed period after, a stated date, any presentment for acceptance must be made before the date of maturity.

(f) A bill drawn payable at a fixed period after sight must be presented for acceptance within one year of its date.

(g) A bill in which the drawer or an endorser or a guarantor has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

(h) A bill in which the drawer or an endorser or a guarantor has stipulated that it shall be presented for acceptance, but without stating a date or time-limit for presentment, [or a bill which is drawn payable elsewhere than at the place of business or residence of the drawee and which is not a bill payable after sight,] must be presented before the date of maturity.

##### Article 49

Presentment for acceptance shall be dispensed with

(1) Where the drawee is dead or is in the course of insolvency proceedings, or is a person not having capacity to accept the bill; or

(2) Where, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance;

(3) Where a party has waived presentment expressly or by implication, in respect of such party.

*Article 50*

(1) If a bill which must be presented for acceptance in accordance with article 46 (1) (a) is not duly presented, the party who stipulated on the bill that it shall be presented shall not be liable on the bill.

(2) If a bill which must be presented for acceptance in accordance with article 46 (1) (b) or (c) is not duly presented, the drawer, the endorsers and the guarantors shall not be liable on the bill.

*Article 51*

(1) A bill is dishonoured by non-acceptance

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

(b) When presentment for acceptance is dispensed with pursuant to article 49, and the bill is not accepted.

(2) Where a bill is dishonoured by non-acceptance the holder may, subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorsers and the guarantors.

## SECTION 2. PRESENTMENT FOR PAYMENT

*Article 52*

(1) Presentment of a bill for payment shall be necessary in order to render the drawer, an endorser or a guarantor liable on the bill.

(2) Presentment of a note for payment shall be necessary in order to render an endorser or his guarantor liable on the note.

(3) Presentment for payment shall not be necessary to render the acceptor liable.

*Article 53*

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

(a) The holder of an instrument must present the instrument for payment to the drawee or to the acceptor or to the maker, as the case may be.

(b) Where a bill is drawn upon or accepted by two or more drawees, or where a note is signed by two or more makers, it shall be sufficient to present the instrument to any one of them; if a place of payment is specified, presentment shall be made at that place.

(c) Where the drawee or the acceptor or the maker is dead, and no place of payment is specified, presentment must be made to the person or authority who under the applicable law is entitled to administer his estate.

(d) An instrument which is not payable on demand must be presented for payment on the day on which it is payable or on one of the two business days which follow.

(e) An instrument which is payable on demand must be presented for payment within one year of its stated date and if the instrument is undated within one year of the issue thereof.

(f) An instrument must be presented for payment:

(i) At the place of payment specified on the instrument; or

(ii) Where no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated on the instrument; or

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

*Article 54*

(1) Delay in making presentment for payment shall be excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, presentment must be made promptly [within . . . days].

(2) Presentment for payment shall be dispensed with

(a) Where the drawer, the maker, an endorser or a guarantor has waived presentment expressly or by implication; such waiver shall bind only the party who made it;

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

(c) Where an instrument is payable on demand, and the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(d) Where the drawee or acceptor of a bill or the maker of a note, after the issue thereof, is in the course of insolvency proceedings in the country where presentment is to be made;

(e) As regards a bill, where the bill has been protested for dishonour by non-acceptance;

(f) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to pay the bill and the drawer has no reason to believe that the bill would be paid if presented.

*Article 55*

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

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

*Article 56*

(1) An instrument is 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 Law; or

(b) When presentment for payment is dispensed with pursuant to article 54 (2), and the instrument is overdue and unpaid.

(2) Where a bill is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the drawer, the endorsers and the guarantors.

(3) Where a note is dishonoured by non-payment, the holder may, subject to the provisions of article 57, exercise a right of recourse against the endorsers and their guarantors.

### SECTION 3. RECOURSE

#### Article 57

Where a bill has been dishonoured by non-acceptance or by non-payment or where a note has been dishonoured by non-payment, the holder may exercise his right of recourse only after the bill or note has been duly protested for dishonour in accordance with the provisions of articles 58 to 61.

#### Article 58

(1) A protest may be effected by means of a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person; the declaration shall be to the effect that acceptance or payment is refused.

(2) A protest shall be effected by means of an authenticated protest as specified in paragraphs (3) and (4) of this article in the following cases:

(a) Where the declaration specified in paragraph (1) of this article is refused or cannot be obtained; or

(b) Where the instrument stipulates an authenticated protest; or

(c) Where the holder does not effect a protest by means of the declaration specified in paragraph (1) of this article.

(3) An authenticated protest is a statement of dishonour drawn up, signed and dated by a person authorized to certify dishonour of a negotiable instrument by the law of the place where acceptance or payment of the bill or payment of the note was refused. The statement shall specify

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

(b) The place and date of protest; and

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

(4) An authenticated protest may

(a) Be made on the instrument itself; or

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

#### Article 59

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

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

[(3) An authenticated protest must be effected at the place where the instrument has been dishonoured.]

#### Article 60

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

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

#### Article 61

(1) Delay in protesting a bill for dishonour by non-acceptance or by non-payment or a note for dishonour by non-payment shall be excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, protest must be made promptly [within . . . days].

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

(a) Where the drawer, the maker, an endorser or a guarantor has waived protest expressly or by implication; such waiver shall bind only the party who made it;

(b) Where the cause of delay in making protest continues to operate beyond 30 days after maturity or, in the case of an instrument payable on demand, where the cause of delay continues to operate beyond 30 days after expiration of the time-limit for presentment for payment;

(c) As regards the drawer of a bill where (i) the drawer and the drawee are the same person; or (ii) the drawer is the person to whom the bill is presented for payment or (iii) the drawer has countermanded payment; or (iv) the drawee or the acceptor is under no obligation to accept or pay the bill;

(d) As regards the endorser, where the endorser is the person to whom the instrument is presented for payment;

(e) Where presentment for acceptance or for payment is dispensed with in accordance with articles 49 or 54 (2).

#### Article 62

(1) Where a bill has been dishonoured by non-acceptance or by non-payment, due notice of dishonour must be given to the drawer, the endorsers and their guarantors.

(2) Where a note has been dishonoured by non-payment, due notice of dishonour must be given to the endorsers and their guarantors.



(3) Notice may be given by the holder or any party who has himself received notice, or by any other party who can be compelled to pay the instrument.

(4) Notice operates for the benefit of all parties who have a right of recourse on the instrument against the party notified.

#### Article 63

Notice of dishonour may be given in writing or orally and in any terms which identify the instrument and state that it has been dishonoured. The return of the dishonoured instrument shall be sufficient notice.

#### Article 64

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

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

(b) The receipt of notice from another party.

#### Article 65

(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(2) Notice of dishonour shall be dispensed with:

(a) Where the drawer or an endorser or a guarantor has waived notice of dishonour expressly or by implication; such waiver shall bind only the party who made it;

(b) Where the cause of delay in giving notice continues to operate beyond 30 days after the last date on which it should have been given;

(c) As regards the drawer of the bill, where the drawer and the drawee are the same person, or the drawer is the person to whom the bill is presented for acceptance or payment, or where the drawer has countermanded payment, or where the drawee or the acceptor is under no obligation to accept or pay the bill;

(d) As regards the endorser, where the endorser is the person to whom the instrument is presented for payment.

#### Article 66

Failure to give due notice of dishonour shall render the holder liable to the drawer, the endorsers and their guarantors for any damages that they may suffer from such failure [provided that the total amount of the damages shall not exceed the amount of the instrument].

#### Article 67

The holder may recover from any party liable,

(a) At maturity: the amount of the instrument;

(b) After maturity: the amount of the instrument, interest due at (...) per cent per annum above the official rate of discount effective at the place of payment [at the place where the holder has his residence or place

of business] calculated on the basis of the number of days and of a year of (365) days, and any expenses of protest and of the notices given;

(c) Before maturity: the amount of the bill, subject to a discount from the date of making payment to the date of maturity, to be calculated at the official rate of discount effective on the date when the recourse is exercised at the place where the holder has his residence or place of business.

#### Article 68

A party who takes up and pays an instrument may recover from the parties liable to him:

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

(b) Interest due on that sum calculated at the highest permissible legal rate at the place of payment from the day on which he made payment;

(c) Any expenses which he has incurred.

### Part Six. Discharge

#### SECTION 1. GENERAL

#### Article 69

(1) Liability of a party on an instrument is discharged by:

(a) Payment in accordance with articles 70 to 75 or 80;

(b) Renunciation in accordance with article 76;

(c) Reacquisition of the instrument by a prior party in accordance with article 77;

(d) Discharge of a prior party in accordance with article 78 (1);

(e) Absence of his assent to a qualified acceptance in accordance with article 40 (2).

(2) A party is also discharged of his liability on the instrument by any act or agreement which would discharge him of his contractual liability for the payment of money.

#### SECTION 2. PAYMENT

#### Article 70

(1) A party is discharged of his liability on the instrument when he pays the holder or a party subsequent to himself the amount due pursuant to articles 67 or 68.

(2) A person receiving payment of an instrument in accordance with paragraph (1) shall deliver the receipted instrument and any authenticated protest to the person making the payment.

#### Article 71

(1) The holder may take partial payment from the drawee or the acceptor or the maker. In that case

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

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

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

(3) When an instrument has been paid in part, a party who pays the unpaid amount shall be discharged of his liability thereon, and the person receiving the payment shall deliver the receipted instrument and any authenticated protest to the party making the payment.

#### Article 72

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

[(2) If payment is not then made in the place where the instrument was duly presented for payment in accordance with article 53 (f), the instrument shall be considered as dishonoured by non-payment.]

#### Article 73

(1) Where an instrument has been materially altered as to its amount, any person who pays the instrument pursuant to such alteration without knowledge of the alteration shall have the right to recover the amount by which the instrument was raised from the party who so altered the instrument or from any subsequent party, except a party who was without knowledge of the alteration at the time he transferred or negotiated the instrument.

(2) In any other case of alteration which is material, as defined in article 29 (2), any person who pays the instrument pursuant to such alteration without knowledge of the alteration shall have the right to receive the amount paid by him from the person who altered the instrument, or from any subsequent party except a party who was without knowledge of the alteration at the time he transferred or negotiated the instrument.

(3) Where the signature of the drawer or the maker has been forged, any person who pays the instrument without knowledge of the forgery shall have the right to recover the amount paid by him from the person who forged the signature of the drawer or of the maker, or from any party subsequent to the drawer or the maker except a party who was without knowledge of the forgery at the time he transferred or negotiated the instrument.

#### Article 74

##### (Alternative A)

(1) (a) Where an instrument is made payable in a currency which is not that of the country where payment takes place, the sum payable may be paid in the currency of that country.

(b) When such instrument is paid in the currency of the country where payment takes place, the amount payable shall be calculated according to the rate of exchange on the day of maturity or, if so specified, according to the rate of exchange indicated on the instrument.

(2) Where such instrument is dishonoured by non-acceptance or by non-payment, the sum payable shall be paid in the currency of the country where payment takes place. In that case, the holder may at his option demand from the party liable that the amount payable shall be calculated according to the rate of exchange on the day of dishonour, or the day of the maturity or the day of payment.

(3) The provisions of paragraphs (1) and (2) shall not apply when the drawer or maker has stipulated on the instrument that payment be made in a specified currency.

#### Article 74

##### (Alternative B)

(1) Where an instrument is made payable in a currency which is not that of the country where payment takes place, the sum payable shall be paid in the currency stated on the instrument.

(2) (a) The provision of paragraph (1) shall not apply when the drawer or maker has stipulated on the instrument that payment be made in the currency of the country payment takes place. In that case, the amount payable shall be calculated according to the rate of exchange on the day of maturity or, if so specified, according to the rate of exchange indicated on the instrument.

(b) When an instrument containing such a stipulation is dishonoured by non-acceptance or by non-payment, the holder may at his option demand from the party liable that the amount payable shall be calculated according to the rate of exchange on the day of dishonour, or the day of maturity, or the day of payment.

#### Article 75

[(1) Where a party tenders payment of the amount due in accordance with articles 67 or 68 to the holder at or after maturity and the holder refuses to accept such payment:

(a) The party tendering payment shall not be liable for any interest or costs as from the day payment was offered; and

(b) Any party who has a right of recourse against a party tendering payment shall not be liable for such interests or costs.

(2) The provisions of paragraphs (1) (b) shall also apply if the person tendering payment to the holder is the drawee.]

## SECTION 3. RENUNCIATION

*Article 76*

(1) A party is discharged of his liability on the instrument if the holder, at or after maturity, writes on the instrument an unconditional renunciation of his rights thereon against such party.

(2) Such renunciation shall not affect the right to the instrument of the party who so renounced his rights thereon.

## SECTION 4. REACQUISITION BY A PRIOR PARTY

*Article 77*

A party liable who rightfully becomes the holder of the instrument shall be discharged of liability thereon to any party who had a right of recourse against him.

## SECTION 5. DISCHARGE OF A PRIOR PARTY

*Article 78*

(1) Where a party is discharged of liability on an instrument, any party who had a right of recourse against him shall also be discharged.

(2) An agreement, not amounting to partial or total discharge, between the holder and a party liable on the instrument shall not affect the right and liabilities of other parties.

## Part Seven. Limitation (prescription)

*Article 79*

[It is expected that the law will include an article on the limitation of legal proceedings and the prescription of rights arising under an international instrument. The preparation of such an article presents difficult problems of reconciling the divergent approaches of different legal systems<sup>1</sup> and requires further study. It is expected that proposals with respect to this problem can in due course be submitted to the Working Group.]

## Part Eight. Lost instruments

*Article 80*

(1) Where an instrument is lost [whether by destruction, wrongful detention or otherwise] the person who lost the instrument shall, subject to the provisions of paragraphs (2) and (3) of this article, have the same right to payment which he would have had if he had been in possession of the instrument.

(2) (a) A person claiming payment of a lost instrument shall establish in writing to the satisfaction of the party from whom he claims payment

(i) The fact that, when in possession of the instrument, he had a right to payment;

(ii) The facts which prevent production of the instrument; and

(iii) The contents of the lost instrument.

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

(c) The kind of security and its terms shall be determined by agreement between the person claiming payment and the party from whom payment is claimed. Failing such an agreement, the kind of security and its terms shall be determined by the Court.

(d) Where security cannot be given, the Court may order the party from whom payment is claimed to deposit the amount of the lost instrument, and any interest and expenses which may be claimed under articles 67 and 68, with the Court or any other competent authority. Such deposit shall be considered as payment to the person claiming payment.

*Article 81*

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

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

(3) Failure to notify shall render the party who has paid the lost instrument liable for any damages that the person whom he paid may suffer from such failure (provided that the total amount of the damages shall not exceed the amount of the instrument).

*Article 82*

(1) A party who has paid a lost instrument and who is subsequently discharged of his liability on the instrument shall have the right

(a) Where security was given, to indemnify himself; or

(b) Where the amount was deposited with a Court or other competent authority, to reclaim the amount so deposited.

(2) Where the amount was deposited with a Court or other competent authority and was not reclaimed under paragraph (1) (b) of this article within the period of time provided by article 70, the person for whose benefit the amount was deposited may request the Court which ordered the deposit to order that the amount deposited be paid out to him. The Court shall grant such request upon such terms and conditions as it may require.

<sup>1</sup> See report of the Working Group on Time-Limits and Limitations in the International Sale of Goods, A/CN.9/70/Add.1, commentary to opening clauses, para. 4.

*Article 83*

A person claiming payment of a lost instrument duly effects protest for dishonour by non-payment by the use of a copy of the lost instrument or a writing establishing the elements of the lost instrument pertaining to the requirements set out in article 1 (2) or (3).

*Article 84*

A person receiving payment of a lost instrument in accordance with article 80 shall deliver to the person paying the writing required under article 80 (2) (a) (iii) received by him.

*Article 85*

A party who paid a lost instrument in accordance with article 80 shall, upon due proof of such payment have the same rights which he would have had if he had been in possession of the instrument.

*Article 86*

[(a) Where an instrument was lost by the payee or by his endorsee for collection whether by destruction, wrongful detention or otherwise, the payee, upon due

proof of the fact that he or his endorsee for collection lost the instrument, shall have the right to request the drawer or the maker to issue a duplicate of the lost instrument. The drawer or maker, upon issuing such duplicate may request the payee to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

(b) The kind of security and its terms shall be determined by agreement between the drawer or maker issuing a duplicate of a lost instrument and the payee. Failing such an agreement, the kind of security and its terms shall be determined by the Court.

(c) (i) The drawer or the maker when issuing a duplicate of a lost bill or note may write on the face thereof the word "duplicate" (or words of similar import).

(ii) Where an instrument is marked as being a duplicate, it shall be considered as an instrument under this law, provided that a duplicate of a lost bill or note cannot be negotiated except for purposes of collection.

(d) Refusal by the drawer or maker to issue a duplicate of a lost instrument shall render the drawer or maker liable for any damages that the payee may suffer from such refusal (provided that the total amount of the damages shall not exceed the amount of the lost instrument).]

### 3. List of relevant documents not reproduced in the present volume

<i>Title or description</i>	<i>Document reference</i>
<i>Working Group on International Negotiable Instruments, first session</i>	
Provisional agenda.....	A/CN.9/WG.IV/WP.1
Draft uniform law on international bills of exchange and international promissory notes, and commentary: report of the Secretary-General .....	A/CN.9/WG.IV/WP.2
Consideration of the draft uniform law on international bills of exchange and international promissory notes: working paper prepared by the Secretariat.....	A/CN.9/WG.IV/R.1
Draft report of the Working Group on International Negotiable Instruments on the work of its first session .....	A/CN.9/WG.IV/CRP.1 and Add.1
Defences available against protected holder ...	A/CN.9/WG.IV/CRP.2
Bankers' commercial credits	
International payments: revision of the Uniform Customs and Practice for Documentary Credits. Note by the Secretary-General ....	A/CN.9/L.23