

*List of headings and subheadings*

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

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

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

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

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

*Article 1*

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

*Article 3*

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

*Article 4*

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

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

*Article 5*

In this Convention:

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

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

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[Article (X)]

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

*Article 6*

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.

*Article 7*

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

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

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

*Article 7 bis*

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

*Article 8*

(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.

(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 9*

(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 10*

(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.

*Article 11*

(1) An incomplete cheque which satisfies the requirements set out in subparagraphs (a) and (g) 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.

*Article 13*

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.

*New article*

(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 13 bis*

(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 15*

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 13.

#### *Article 16*

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 17*

(1) An endorsement must be unconditional.

(2) A conditional endorsement transfers the cheque whether or not the condition is fulfilled.

#### *Article 18*

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

#### *Article 19*

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 20*

(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 21*

(1) The holder of a cheque may transfer it to a prior party in accordance with article 13; 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 21 bis*

A cheque may be transferred in accordance with article 13 after the expiration of the period of time for presentment.

#### *Article 22*

(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.

(1 bis) Except to the extent provided in article C, the liability of a 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 purpose 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.

#### *Article 23*

(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 13.

#### *Article 24*

(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 25

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

(a) Defences under articles 27 (1), 28, 29 (1), 30 (2, 3), 50, 55 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 25 bis

(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 67 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 26

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

#### Article 27

(1) Subject to the provisions of articles 28 and 30, 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 28

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 29

(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 30

(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 30 bis

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 34

(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 67, the amount of the cheque, and any interest and expenses which may be recovered under article 67 or 68.

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

#### Article X

(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".

#### Article 41

(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 67, the amount of the cheque, and any interest and expenses which may be recovered under article 67 or 68.

(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 42

(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 67 or 68.

(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.

#### Article 43

(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 44

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 45

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.

*Article 53*

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;
- (f) A cheque must be presented for payment within 120 days of its stated date;
- (g) 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.
- (h) A cheque may be presented for payment at a clearing-house.

*Article 54*

(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.

(c) If the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment.

*Article 55*

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 56*

(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;

(c) If presentment for payment is dispensed with pursuant to article 54 (2) and the cheque is unpaid.

(2) If a cheque 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 their guarantors.

*Article 57*

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 58 to 61.

*Article 58*

(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 59*

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 60*

(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.

#### Article 61

(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;

(e) If presentment for payment is dispensed with in accordance with article 54 (2).

#### Article 62

(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.

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

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

#### Article 63

(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 64

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 65

(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 66

Failure to give notice of dishonour renders a person who is required to give such notice under article 62 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 67 or 68.

#### Article 66 bis

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.