UNCITRAL Convention on International Bills of Exchange and International Promissory Notes, 1988

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CHAPTER I. - Sphere Of Application And Form Of The Instrument

Article 1

1. This Convention applies to an international bill of exchange when it contains the heading "International bill of exchange (UNCITRAL Convention)" and also contains in its text the words "International bill of exchange (UNCITRAL Convention)".

2. This Convention applies to an international promissory note when it contains the heading "International promissory note (UNCITRAL Convention)" and also contains in its text the words "International promissory note (UNCITRAL Convention)".

3. This Convention does not apply to cheques.

Article 2

1. An international bill of exchange is a bill of exchange which specifies at least two of the following places and indicates that any two so specified are situated in different States:

(a) The place where the bill is drawn

(b) The place indicated next to the signature of the drawer

(c) The place indicated next to the name of the drawee

(d) The place indicated next to the name of the payee

(e) The place of payment, provided that either the place where the bill is drawn or the place of payment is specified on the bill and that such place is situated in a Contracting State.

2. An international promissory note is a promissory note which specifies at least two of the following places and indicates that any two so specified are situated in different States:

(a) The place where the note is made

(b) The place indicated next to the signature of the maker

(c) The place indicated next to the name of the payee

(d) The place of payment, provided that the place of payment is specified on the note and that such place is situated in a Contracting State.

3. This Convention does not deal with the question of sanctions that may be imposed under national law in cases where an incorrect or false statement has been made on an instrument in respect of a place referred to in paragraph1 or 2 of this article. However, any such sanctions shall not affect the validity of the instrument or the application of this Convention.

Article 3

1. A bill of exchange is a written instrument which:

(a) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order

(b) Is payable on demand or at a definite time

(c) Is dated

(d) Is signed by the drawer.

2. A promissory note is a written instrument which:

(a) Contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to his order

(b) Is payable on demand or at a definite time

(c) Is dated

(d) Is signed by the maker.

CHAPTER II. - Interpretation

Section 1. - General provisions

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 and the observance of good faith in international transactions.

Article 5

In this Convention:

(a) "Bill" means an international bill of exchange governed by this Convention

(b) "Note" means an international promissory note governed by this Convention

(c) "Instrument" means a bill or a note

(d) "Drawee" means a person on whom a bill is drawn and who has not accepted it

(e) "Payee" means a person in whose favour the drawer directs payment to be made or to whom the maker promises to pay

(f) "Holder" means a person in possession of an instrument in accordance with article 15

(g) "Protected holder" means a holder who meets the requirements of article29

(h) "Guarantor" means any person who undertakes an obligation of guarantee under article 46, whether governed by paragraph4(b) ("guaranteed") or paragraph4(c) ("aval") of article47

(i) "Party" means a person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor

(j) "Maturity" means the time of payment referred to in paragraphs 4, 5, 6and 7 of article 9

(k) "Signature" means a handwritten signature, its facsimile or an equivalent authentication effected by any other means

(l) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, provided that this Convention shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement.

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.

Section 2. - Interpretation of formal requirements

Article 7

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

(a) With interest

(b) By instalments at successive dates

(c) By instalments at successive dates with a stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due

(d) According to a rate of exchange indicated in the instrument or to be determined as directed by the instrument

(e) In a currency other than the currency in which the sum is expressed in the instrument.

Article 8

1. If there is a discrepancy between the sum expressed in words and the sum expressed in figures, the sum payable by the instrument is the sum expressed in words.

2. If the sum is expressed more than once in words, and there is a discrepancy, the sum payable is the smaller sum. The same rule applies if the sum is expressed more than once in figures only, and there is a discrepancy.

3. If the sum 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 in the instrument, 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.

4. If an instrument states that the sum is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.

5. A stipulation stating that the sum is to be paid with interest is deemed not to have been written on the instrument unless it indicates the rate at which interest is to be paid.

6. A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise available to the public and not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions.

7. If the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated expressly in the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are otherwise limited.

8. If a variable rate does not qualify under paragraph6 of this article or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate calculated in accordance with paragraph2 of article 70.

Article 9

1. An instrument is deemed to be payable on demand:

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

(b) If no time of payment is expressed.

2. An instrument payable at a definite time 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. An instrument is deemed to be 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 instrument

(b) At a fixed period after sight

(c) By instalments at successive dates

(d) By instalments at successive dates with the stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due.

4. The time of payment of an instrument payable at a fixed period after date is determined by reference to the date of the instrument.

5. The time of payment of a bill payable at a fixed period after sight is determined by the date of acceptance or, if the bill is dishonoured by non-acceptance, by the date of protest or, if protest is dispensed with, by the date of dishonour.

6. The time of payment of an instrument payable on demand is the date on which the instrument is presented for payment.

7. The time of payment of a note payable at a fixed period after sight is determined by the date of the visa signed by the maker on the note or, if his visa is refused, by the date of presentment.

8. If an instrument is drawn, or made, payable one or more months after a stated date or after the date of the instrument or after sight, the instrument is payable on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument is payable on the last day of that month.

Article 10

1. A bill may be drawn:

(a) By two or more drawers

(b) Payable to two or more payees.

2. A note may be made:

(a) By two or more makers

(b) 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 may be exercised only by all of them.

Article 11

A bill may be drawn by the drawer:

(a) On himself

(b) Payable to his order.

Section 3. - Completion of an incomplete instrument

Article 12

1. An incomplete instrument which satisfies the requirements set out in paragraph1 of article1 and bears the signature of the drawer or the acceptance of the drawee, or which satisfies the requirements set out in paragraph2 of article1 and paragraph2(d) of article3, but which lacks other elements pertaining to one or more of the requirements set out in articles2 and 3, may be completed, and the instrument so completed is effective as a bill or a note.

2. If such an instrument is completed without authority or otherwise than in accordance with the authority given:

(a) A party who signed the instrument before the completion may invoke such lack of authority as a defence against a holder who had knowledge of such lack of authority when he became a holder

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

CHAPTER III. - Transfer

Article 13

An instrument is transferred:

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

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

Article 14

1. An endorsement must be written on the instrument 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 instrument is payable to a person in possession of it

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

3. A signature alone, other than that of the drawee, is an endorsement only if placed on the back of the instrument.

Article 15

1. A person is a holder if he is:

(a) The payee in possession of the instrument

(b) In possession of an instrument 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 endorsement was forged or was signed by an agent without authority.

2. If 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 instrument was obtained by him or any previous holder under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument.

Article 16

The holder of an instrument on which the last endorsement is in blank may:

(a) Further endorse it either by an endorsement in blank or by a special endorsement

(b) Convert the blank endorsement into a special endorsement by indicating in the endorsement that the instrument is payable to himself or to some other specified person

(c) Transfer the instrument in accordance with subparagraph(b) of article13.

Article 17

1. If the drawer or the maker has inserted in the instrument such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred except for purposes of collection, and any endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

2. If an endorsement contains the words "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred further except for purposes of collection, and any subsequent endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

Article 18

1. An endorsement must be unconditional.

2. A conditional endorsement transfers the instrument whether or not the condition is fulfilled. The condition is ineffective as to those parties and transferees who are subsequent to the endorsee.

Article 19

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

Article 20

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

Article 21

1. If 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 instrument, the endorsee is a holder who:

(a) May exercise all rights arising out of the instrument

(b) May endorse the instrument only for purposes of collection

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

2. The endorser for collection is not liable on the instrument to any subsequent holder.

Article 22

1. If an endorsement contains the words "value in security", "value in pledge", or any other words indicating a pledge, the endorsee is a holder who:

(a) May exercise all rights arising out of the instrument

(b) May endorse the instrument only for purposes of collection

(c) Is subject only to the claims and defences specified in article28 or article30.

2. If such an endorsee endorses for collection, he is not liable on the instrument to any subsequent holder.

Article 23

The holder of an instrument may transfer it to a prior party or to the drawee in accordance with article13

Article 24

An instrument may be transferred in accordance with article13 after maturity, except by the drawee, the acceptor or the maker.

Article 25

1. If an endorsement is forged, the person whose endorsement is forged, or a party who signed the instrument before the forgery, has the right to recover compensation for any damage that he may have suffered because of the forgery against:

(a) The forger

(b) The person to whom the instrument was directly transferred by the forger

(c) A party or the drawee who paid the instrument to the forger directly or through one or more endorsees for collection.

2. However, an endorsee for collection is not liable under paragraph1 of this article if he is without knowledge of the forgery:

(a) At the time he pays the principal or advises him of the receipt of payment

(b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

3. Furthermore, a party or the drawee who pays an instrument is not liable under paragraph1 of this article if, at the time he pays the instrument, he is without knowledge of the forgery, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

4. Except as against the forger, the damages recoverable under paragraph1 of this article may not exceed the amount referred to in article70 or article71.

Article 26

1. If an endorsement is made by an agent without authority or power to bind his principal in the matter, the principal, or a party who signed the instrument before such endorsement, has the right to recover compensation for any damage that he may have suffered because of such endorsement against:

(a) The agent

(b) The person to whom the instrument was directly transferred by the agent

(c) A party or the drawee who paid the instrument to the agent directly or through one or more endorsees for collection.

2. However, an endorsee for collection is not liable under paragraph1 of this article if he is without knowledge that the endorsement does not bind the principal:

(a) At the time he pays the principal or advises him of the receipt of payment

(b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

3. Furthermore, a party or the drawee who pays an instrument is not liable under paragraph1 of this article if, at the time he pays the instrument, he is without knowledge that the endorsement does not bind the principal, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

4. Except as against the agent, the damages recoverable under paragraph1 of this article may not exceed the amount referred to in article70 or article71.

CHAPTER IV. - Rights And Liabilities

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

Article 27

1. The holder of an instrument has all the rights conferred on him by this Convention against the parties to the instrument.

2. The holder may transfer the instrument in accordance with article 13.

Article 28

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

(a) Any defence that may be set up against a protected holder in accordance with paragraph1 of article 30

(b) Any defence based on the underlying transaction between himself and the drawer or between himself and his transferee, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it

(c) Any defence arising from the circumstances as a result of which he became a party, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it

(d) Any defence which may be raised against an action in contract between himself and the holder

(e) Any other defence available under this Convention.

2. The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person, but only if he took the instrument with knowledge of such claim or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it.

3. A holder who takes an instrument after the expiration of the time-limit for presentment for payment is subject to any claim to, or defence against liability on, the instrument to which his transferor is subject.

4. 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 instrument unless:

(a) The third person asserted a valid claim to the instrument

(b) The holder acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

Article 29

"Protected holder" means the holder of an instrument which was complete when he took it or which was incomplete within the meaning of paragraph1 of article12 and was completed in accordance with authority given, provided that when he became a holder:

(a) He was without knowledge of a defence against liability on the instrument referred to in paragraphs1(a), (b), (c) and (e) of article28

(b) He was without knowledge of a valid claim to the instrument of any person

(c) He was without knowledge of the fact that it had been dishonoured by non-acceptance or by non-payment

(d) The time-limit provided by article55 for presentment of that instrument for payment had not expired

(e) He did not obtain the instrument by fraud or theft or participate in a fraud or theft concerning it.

Article 30

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

(a) Defences under paragraph1 of article33, article34, paragraph1 of article35, paragraph3 of article36, paragraph1 of article53, paragraph1 of article57, paragraph1 of article63 and article84 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 instrument of that party

(c) Defences based on his incapacity to incur liability on the instrument or on the fact that he signed without knowledge that his signature made him a party to the instrument, provided that his lack of knowledge was not due to his negligence and provided that he was fraudulently induced so to sign.

2. The rights to an instrument of a protected holder are not subject to any claim to the instrument 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.

Article 31

1. The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument which the protected holder had.

2. Those rights are not vested in a subsequent holder if:

(a) He participated in a transaction which gives rise to a claim to, or a defence against liability on, the instrument

(b) He has previously been a holder, but not a protected holder.

Article 32

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

Section 2. - Liabilities of the parties

A. - General provisions

Article 33

1. Subject to the provisions of articles34 and36, a person is not liable on an instrument unless he signs it.

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

Article 34

A forged signature on an instrument does not impose any liability on the person whose signature was forged. However, if he consents to be bound by the forged signature or represents that it is his own, he is liable as if he had signed the instrument himself.

Article 35

1. If an instrument is materially altered:

(a) A party who signs it after the material alteration is liable according to the terms of the altered text

(b) A party who signs it before the material alteration is liable according to the terms of the original text. However, if a party makes, authorizes or assents to a material alteration, he is liable according to the terms of the altered text.

2. A signature is presumed to have been placed on the instrument after the material alteration unless the contrary is proved.

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

Article 36

1. An instrument may be signed by an agent.

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

3. A signature placed on an instrument by a person as agent but who lacks authority to sign or exceeds his authority, or by an agent who has authority to sign but who does not show on the instrument that he is signing in a representative capacity for a named person, or who shows on the instrument that he is signing in a representative capacity but does not name the person whom he represents, imposes liability on the person signing and not on the person whom he purports to represent.

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

5. A person who is liable pursuant to paragraph3 of this article and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

Article 37

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

B. - The drawer

Article 38

1. The drawer engages that upon dishonour of the bill by non-acceptance or by non-payment, and upon any necessary protest, he will pay the bill to the holder, or to any endorser or any endorser's guarantor who takes up and pays the bill.

2. The drawer may exclude or limit his own liability for acceptance or for payment by an express stipulation in the bill. Such a stipulation is effective only with respect to the drawer. A stipulation excluding or limiting liability for payment is effective only if another party is or becomes liable on the bill.

C. - The maker

Article 39

1. The maker engages that he will pay the note in accordance with its terms to the holder, or to any party who takes up and pays the note.

2. The maker may not exclude or limit his own liability by a stipulation in the note. Any such stipulation is ineffective.

D. - The drawee and the acceptor

Article 40

1. The drawee is not liable on a bill until he accepts it.

2. The acceptor engages that he will pay the bill in accordance with the terms of his acceptance to the holder, or to any party who takes up and pays the bill.

Article 41

1. An acceptance must be written on the bill and may be effected:

(a) By the signature of the drawee accompanied by the word "accepted" or by words of similar import

(b) By the signature alone of the drawee.

2. An acceptance may be written on the front or on the back of the bill.

Article 42

1. An incomplete bill which satisfies the requirements set out in paragraph1 of article1 may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.

2. A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or by non-payment.

3. If a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance

4. If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

Article 43

1. An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.

2. If the drawee stipulates in the bill that his acceptance is subject to qualification:

(a) He is nevertheless bound according to the terms of his qualified acceptance

(b) The bill is dishonoured by non-acceptance.

3. An acceptance relating to only a part of the sum payable is a qualified acceptance. If the holder takes such an acceptance, the bill is dishonoured by non-acceptance only as to the remaining part.

4. An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance, provided that:

(a) The place in which payment is to be made is not changed

(b) The bill is not drawn payable by another agent.

E. - The endorser

Article 44

1. The endorser engages that upon dishonour of the instrument by non-acceptance or by non-payment, and upon any necessary protest, he will pay the instrument to the holder, or to any subsequent endorser or any endorser's guarantor who takes up and pays the instrument.

2. An endorser may exclude or limit his own liability by an express stipulation in the instrument. Such a stipulation is effective only with respect to that endorser.

F. - The transferor by endorsement or by mere delivery

Article 45

1. Unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, represents to the holder to whom he transfers the instrument that:

(a) The instrument does not bear any forged or unauthorized signature

(b) The instrument has not been materially altered

(c) At the time of transfer, he has no knowledge of any fact which would impair the right of the transferee to payment of the instrument against the acceptor of a bill or, in the case of an unaccepted bill, the drawer, or against the maker of a note.

2. Liability of the transferor under paragraph1 of this article is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

3. If the transferor is liable under paragraph1 of this article, the transferee may recover, even before maturity, the amount paid by him to the transferor, with interest calculated in accordance with article70, against return of the instrument.

G. - The guarantor

Article 46

1. Payment of an instrument, whether or not it has been accepted, may be guaranteed, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person, who may or may not already be a party.

2. A guarantee must be written on the instrument 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. For the purposes of this Convention, the words "prior endorsements guaranteed" or words of similar import do not constitute a guarantee.

4. A guarantee may be effected by a signature alone on the front of the instrument. A signature alone on the front of the instrument, other than that of the maker, the drawer or the drawee, is a guarantee.

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 acceptor or the drawee in the case of a bill, and the maker in the case of a note.

6. A guarantor may not raise as a defence to his liability the fact that he signed the instrument before it was signed by the person for whom he is a guarantor, or while the instrument was incomplete.

Article 47

1. The liability of a guarantor on the instrument is of the same nature as that of the party for whom he has become guarantor.

2. If the person for whom he has become guarantor is the drawee, the guarantor engages:

(a) To pay the bill at maturity to the holder, or to any party who takes up and pays the bill

(b) If the bill is payable at a definite time, upon dishonour by non-acceptance and upon any necessary protest, to pay it to the holder, or to any party who takes up and pays the bill.

3. In respect of defences that are personal to himself, a guarantor may set up:

(a) Against a holder who is not a protected holder only those defences which he may set up under paragraphs1, 3 and4 of article28

(b) Against a protected holder only those defences which he may set up under paragraph1 of article30.

4. In respect of defences that may be raised by the person for whom he has become a guarantor:

(a) A guarantor may set up against a holder who is not a protected holder only those defences which the person for whom he has become a guarantor may set up against such holder under paragraphs1, 3 and4 of article28

(b) A guarantor who expresses his guarantee by the words "guaranteed", "payment guaranteed" or "collection guaranteed", or words of similar import, may set up against a protected holder only those defences which the person for whom he has become a guarantor may set up against a protected holder under paragraph1 of article30

(c) A guarantor who expresses his guarantee by the words "aval" or "good as aval" may set up against a protected holder only:

(i) The defence, under paragraph1(b) of article30, that the protected holder obtained the signature on the instrument of the person for whom he has become a guarantor by a fraudulent act

(ii) The defence, under article53 orarticle57, that the instrument was not presented for acceptance or for payment

(iii) The defence, under article63, that the instrument was not duly protested for non-acceptance or for non-payment

(iv) The defence, under article84, that a right of action may no longer be exercised against the person for whom he has become guarantor

(d) A guarantor who is not a bank or other financial institution and who expresses his guarantee by a signature alone may set up against a protected holder only the defences referred to in subparagraph(b) of this paragraph

(e) A guarantor which is a bank or other financial institution and which expresses its guarantee by a signature alone may set up against a protected holder only the defences referred to in subparagraph(c) of this paragraph.

Article 48

1. Payment of an instrument by the guarantor in accordance with article72 discharges the party for whom he became guarantor of his liability on the instrument to the extent of the amount paid.

2. The guarantor who pays the instrument may recover from the party for whom he has become guarantor and from the parties who are liable on it to that party the amount paid and any interest.

CHAPTER V. - Presentment, Dishonour By Non-Acceptance Or Non-Payment, And Recourse

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

Article 49

1. A bill may be presented for acceptance.

2. A bill must be presented for acceptance:

(a) If the drawer has stipulated in the bill that it must be presented for acceptance

(b) If the bill is payable at a fixed period after sight

(c) If the bill is payable elsewhere than at the residence or place of business of the drawee, unless it is payable on demand.

Article 50

1. The drawer may stipulate in the bill that it must not be presented for acceptance before a specified date or before the occurrence of a specified event. Except where a bill must be presented for acceptance under paragraph2(b) or(c) of article49, the drawer may stipulate that it must not be presented for acceptance.

2. If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph1 of this article and acceptance is refused, the bill is not thereby dishonoured.

3. If the drawee accepts a bill notwithstanding a stipulation that it must not be presented for acceptance, the acceptance is effective.

Article 51

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 on a business day at a reasonable hour

(b) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill

(c) If a bill is payable on a fixed date, presentment for acceptance must be made before or on that date

(d) A bill payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date

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

Article 52

1. A necessary or optional presentment for acceptance is dispensed with if:

(a) The drawee is dead, or no longer has the power freely to deal with his assets by reason of his insolvency, or is a fictitious person, or is a person not having capacity to incur liability on the instrument as an acceptor

(b) The drawee is a corporation, partnership, association or other legal entity which has ceased to exist.

2. A necessary presentment for acceptance is dispensed with if:

(a) A bill is payable on a fixed date, and presentment for acceptance cannot be effected before or on that date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome

(b) A bill is payable at a fixed period after sight, and presentment for acceptance cannot be effected within one year of its date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome.

3. Subject to paragraphs1 and2 of this article, delay in a necessary presentment for acceptance is excused, but presentment for acceptance is not dispensed with, if the bill is drawn with a stipulation that it must be presented for acceptance within a stated time-limit, and the delay in presentment for acceptance is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence.

Article 53

1. If a bill which must be presented for acceptance is not so presented, the drawer, the endorsers and their guarantors are not liable on the bill.

2. Failure to present a bill for acceptance does not discharge the guarantor of the drawee of liability on the bill.

Article 54

1. A bill is considered to be dishonoured by non-acceptance:

(a) If the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or if the holder cannot obtain the acceptance to which he is entitled under this Convention

(b) If presentment for acceptance is dispensed with pursuant to article52, unless the bill is in fact accepted.

2. (a) If a bill is dishonoured by non-acceptance in accordance with paragraph1(a) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors, subject to the provisions of article59.

(b) If a bill is dishonoured by non-acceptance in accordance with paragraph1(b) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors.

(c) If a bill is dishonoured by non-acceptance in accordance with paragraph1 of this article, the holder may claim payment from the guarantor of the drawee upon any necessary protest.

3. If a bill payable on demand is presented for acceptance, but acceptance is refused, it is not considered to be dishonoured by non-acceptance.

Section 2. - Presentment for payment and dishonour by non-payment

Article 55

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

(a) The holder must present the instrument to the drawee or to the acceptor or to the maker on a business day at a reasonable hour

(b) A note signed by two or more makers may be presented to any one of them, unless the note clearly indicates otherwise

(c) If the drawee or the acceptor or the maker is dead, presentment must be made to the persons who under the applicable law are his heirs or the persons entitled to administer his estate

(d) Presentment for payment may be made to a person or authority other than the drawee, the acceptor or the maker if that person or authority is entitled under the applicable law to pay the instrument

(e) An instrument which is not payable on demand must be presented for payment on the date of maturity or on one of the two business days which follow

(f) An instrument which is payable on demand must be presented for payment within one year of its date

(g) An instrument must be presented for payment:

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

(ii) If no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated in the instrument

(iii) If 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 habitual residence of the drawee or the acceptor or the maker

(h) An instrument which is presented at a clearing-house is duly presented for payment if the law of the place where the clearing-house is located or the rules or customs of that clearing-house so provide.

Article 56

1. Delay in making presentment for payment is excused if 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 the 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 a guarantor has expressly waived presentment

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

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

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

(b) If an instrument is not payable on demand, and the cause of delay in making presentment referred to in paragraph1 of this article continues to operate beyond thirtydays after maturity

(c) If an instrument is payable on demand, and the cause of delay in making presentment referred to in paragraph1 of this article continues to operate beyond thirtydays after the expiration of the time-limit for presentment for payment

(d) If the drawee, the maker or the acceptor has no longer the power freely to deal with his assets by reason of his insolvency, or is a fictitious person or a person not having capacity to make payment, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist

(e) If there is no place at which the instrument must be presented in accordance with subparagraph(g) of article55.

3. Presentment for payment is also dispensed with as regards a bill, if the bill has been protested for dishonour by non-acceptance.

Article 57

1. If an instrument is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable on it.

2. Failure to present an instrument for payment does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

Article 58

1. An instrument is considered to be dishonoured by non-payment:

(a) If payment is refused upon due presentment or if the holder cannot obtain the payment to which he is entitled under this Convention

(b) If presentment for payment is dispensed with pursuant to paragraph2 of article56 and the instrument is unpaid at maturity.

2. If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article59, exercise a right of recourse against the drawer, the endorsers and their guarantors.

3. If a note is dishonoured by non-payment, the holder may, subject to the provisions of article59, exercise a right of recourse against the endorsers and their guarantors.

Section 3. - Recourse

Article 59

If an instrument is dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles60 to62.

A. - Protest

Article 60

1. A protest is a statement of dishonour drawn up at the place where the instrument 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 instrument is protested

(b) The place of protest

(c) 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.

2. A protest may be made:

(a) On the instrument or on a slip affixed thereto ("allonge")

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

3. Unless the instrument stipulates that protest must be made, a protest may be replaced by 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

4. A declaration made in accordance with paragraph3 of this article is a protest for the purpose of this Convention.

Article 61

Protest for dishonour of an instrument by non-acceptance or by non-payment must be made on the day on which the instrument is dishonoured or on one of the four business days which follow.

Article 62

1. Delay in protesting an instrument for dishonour is excused if 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 the delay ceases to operate, protest must be made with reasonable diligence.

2. Protest for dishonour by non-acceptance or by non-payment is dispensed with:

(a) If the drawer, an endorser or a guarantor has expressly waived protest

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

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

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

(b) If the cause of the delay in making protest referred to in paragraph1 of this article continues to operate beyond thirtydays after the date of dishonour

(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person

(d) If presentment for acceptance or for payment is dispensed with in accordance with article52 or paragraph2 of article56.

Article 63

1. If an instrument which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors are not liable on it.

2. Failure to protest an instrument does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

B. - Notice of dishonour

Article 64

1. The holder, upon dishonour of an instrument by non-acceptance or by non-payment, must give notice of such dishonour:

(a) To the drawer and the last endorser

(b) To all other endorsers and guarantors whose addresses the holder can ascertain on the basis of information contained in the instrument.

2. An endorser or a guarantor who receives notice must give notice of dishonour to the last party preceding him and liable on the instrument.

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

Article 65

1. Notice of dishonour may be given in any form whatever and in any terms which identify the instrument and state that it has been dishonoured. The return of the dishonoured instrument 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 66

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

(b) The day of receipt of notice of dishonour.

Article 67

1. Delay in giving notice of dishonour is excused if the delay is caused by circumstances which are beyond the control of the person required to give notice, and which he could neither avoid nor overcome. When the cause of the 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 a guarantor has expressly waived notice of dishonour

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

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

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

(c) As regards the drawer of the bill, if the drawer and the drawee or the acceptor are the same person.

Article 68

If a person who is required to give notice of dishonour fails to give it to a party who is entitled to receive it, he is liable for any damages which that party may suffer from such failure, provided that such damages do not exceed the amount referred to in article70 or article71.

Section 4. - Amount payable

Article 69

1. The holder may exercise his rights on the instrument against any one party, or several or all parties, liable on it and is not obliged to observe the order in which the parties have become bound. Any party who takes up and pays the instrument may exercise his rights in the same manner against parties liable to him.

2. Proceedings against a party do not preclude proceedings against any other party, whether or not subsequent to the party originally proceeded against.

Article 70

1. The holder may recover from any party liable:

(a) At maturity: the amount of the instrument with interest, if interest has been stipulated for

(b) After maturity:

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

(ii) If interest has been stipulated to be paid after maturity, interest at the rate stipulated, or, in the absence of such stipulation, interest at the rate specified in paragraph2 of this article, calculated from the date of presentment on the sum specified in subparagraph(b) (i) of this paragraph

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

(c) Before maturity:

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

(ii) Any expenses of protest and of the notices given by him.

2. The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.

3. Nothing in paragraph2 of this article prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment.

4. The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or, if he does not have a place of business, his habitual residence, or, if there is no such rate, then at such rate as is reasonable in the circumstances.

Article 71

A party who pays an instrument and is thereby discharged in whole or in part of his liability on the instrument may recover from the parties liable to him:

(a) The entire sum which he has paid

(b) Interest on that sum at the rate specified in paragraph2 of article70, from the date on which he made payment

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

CHAPTER VI. - Discharge

Section 1. - Discharge by payment

Article 72

1. A party is discharged of liability on the instrument when he pays the holder, or a party subsequent to himself who has paid the instrument and is in possession of it, the amount due pursuant to article70 or article71:

(a) At or after maturity

(b) Before maturity, upon dishonour by non-acceptance.

2. Payment before maturity other than under paragraph1(b) of this article does not discharge the party making the payment of his liability on the instrument except in respect of the person to whom payment was made.

3. A party is not discharged of liability if he pays a holder who is not a protected holder, or a party who has taken up and paid the instrument, and knows at the time of payment that the holder or that party acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

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

(i) To the drawee making such payment, the instrument

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

(b) In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument or on a slip affixed thereto ("allonge") and that a receipt therefor be given to him.

(c) If an instrument payable by instalments at successive dates is dishonoured by non-acceptance or by non-payment as to any of its instalments and a party, upon dishonour, pays the instalment, the holder who receives such payment must give the party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

(d) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by non-payment under article58.

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

Article 73

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

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

3. If the holder takes partial payment from the drawee, the guarantor of the drawee, or the acceptor or the maker:

(a) The guarantor of the drawee, or the acceptor or the maker is discharged of his liability on the instrument to the extent of the amount paid

(b) The instrument 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 instrument other than the acceptor, the maker or the guarantor of the drawee:

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

(b) The holder must give such party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

5. The drawee or a party making partial payment may require that mention of such payment be made on the instrument 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 instrument must deliver to the payor the receipted instrument and any authenticated protest.

Article 74

1. The holder may refuse to take payment at a place other than the place where the instrument was presented for payment in accordance with article55.

2. In such case if payment is not made at the place where the instrument was presented for payment in accordance with article55, the instrument is considered to be dishonoured by non-payment.

Article 75

1. An instrument must be paid in the currency in which the sum payable is expressed.

2. If the sum payable is expressed in a monetary unit of account within the meaning of subparagraph(l) of article5 and the monetary unit of account is transferable between the person making payment and the person receiving it, then, unless the instrument specifies a currency of payment, payment shall be made by transfer of monetary units of account. If the monetary unit of account is not transferable between those persons, payment shall be made in the currency specified in the instrument or, if no such currency is specified, in the currency of the place of payment.

3. The drawer or the maker may indicate in the instrument that it must be paid in a specified currency other than the currency in which the sum payable is expressed. In that case:

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

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

(i) Ruling at the place where the instrument must be presented for payment in accordance with subparagraph(g) of article55, if the specified currency is that of that place (local currency)

(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with subparagraph(g) of article55

(c) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated:

(i) If the rate of exchange is indicated in the instrument, according to that rate

(ii) If no rate of exchange is indicated in the instrument, at the option of the holder, according to the rate of exchange ruling on the date of dishonour or on the date of actual payment

(d) If such an instrument is dishonoured by non-payment, the amount payable is to be

calculated:

(i) If the rate of exchange is indicated in the instrument, according to that rate

(ii) If no rate of exchange is indicated in the instrument, at the option of the holder, according to the rate of exchange ruling on the date of maturity or on the date of actual payment.

4. 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-acceptance or by non-payment.

5. The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with subparagraph(g) of article55 or at the place of actual payment.

Article 76

1. Nothing in this Convention prevents a Contracting State from enforcing exchange control regulations applicable in its territory and its provisions relating to the protection of its currency, 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 paragraph1 of this article, an instrument drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of presentment ruling at the place where the instrument must be presented for payment in accordance with subparagraph(g) of article55.

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

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

(iii) Paragraphs4 and5 of article75 are applicable where appropriate.

Section 2. - Discharge of other parties

Article 77

1. If a party is discharged in whole or in part of his liability on the instrument, any party who has a right on the instrument against him is discharged to the same extent.

2. Payment by the drawee of the whole or a part of the amount of a bill to the holder, or to any party who takes up and pays the bill, discharges all parties of their liability to the same extent, except where the drawee pays a holder who is not a protected holder, or a party who has taken up and paid the bill, and knows at the time of payment that the holder or that party acquired the bill by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

CHAPTER VII. - Lost Instruments

Article 78

1. If an instrument is lost, whether by destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraph2 of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession of the instrument.

2.

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

(i) The elements of the lost instrument pertaining to the requirements set forth in paragraph1 or paragraph2 of articles1, 2 and3

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

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

(b) The party from whom payment of a lost instrument 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 instrument.

(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 sum of the lost instrument, and any interest and expenses which may be claimed under article70 or article71, 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.

Article 79

1. A party who has paid a lost instrument and to whom the instrument is subsequently presented for payment by another person must give notice of such presentment to the person whom he paid.

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

3. Failure to give notice renders the party who has paid the lost instrument 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 article70 or article71.

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 instrument and which he could neither avoid nor overcome. When the cause of the 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 thirtydays after the last day on which it should have been given.

Article 80

1. A party who has paid a lost instrument in accordance with the provisions of article78 and who is subsequently required to, and does, pay the instrument, or who, by reason of the loss of the instrument, then loses his right to recover from any party liable to him, has the right:

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

(b) If an 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 paragraph2(b) of article78 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 instrument is lost.

Article 81

For the purpose of making protest for dishonour by non-payment, a person claiming payment of a lost instrument may use a written statement that satisfies the requirements of paragraph2(a) of article78.

Article 82

A person receiving payment of a lost instrument in accordance with article78 must deliver to the party paying the written statement required under paragraph2(a) of article78, receipted by him, and any protest and a receipted account.

Article 83

1. A party who pays a lost instrument in accordance with article78 has the same rights which he would have had if he had been in possession of the instrument.

2. Such party may exercise his rights only if he is in possession of the receipted written statement referred to in article82.

CHAPTER VIII. - Limitation (Prescription)

Article 84

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

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

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

(c) Against the guarantor of the drawee of a bill payable at a definite time, from the date of maturity or, if the bill is dishonoured by non-acceptance, from the date of protest for dishonour or, where protest is dispensed with, from the date of dishonour

(d) Against the acceptor of a bill payable on demand or his guarantor, from the date on which it was accepted or, if no such date is shown, from the date of the bill

(e) Against the guarantor of the drawee of a bill payable on demand, from the date on which he signed the bill or, if no such date is shown, from the date of the bill

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

2. A party who pays the instrument in accordance with article70 or article71 may exercise his right of action against a party liable to him within one year from the date on which he paid the instrument.

CHAPTER IX. - Final Provisions

Article 85

The Secretary-General of the United Nations is hereby designated as the Depositary for this Convention.

Article 86

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until 30June1990.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 87

1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the Depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Contracting State makes no declaration under paragraph1 of this article, the Convention is to extend to all territorial units of that State.

Article 88

1. Any State may declare at the time of signature, ratification, acceptance, approval or accession that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States.

2. No other reservations are permitted.

Article 89

1. This Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of twelve months after the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 90

1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the Depositary.

2. The denunciation takes effect on the first day of the month following the expiration of six months after the notification is received by the Depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the Depositary. The Convention remains applicable to instruments drawn or made before the date at which the denunciation takes effect.

[Post Provisions]

[Post Clauses (If any: Signed

DONE at New York, this ninth day of December, one thousand nine hundred and eighty-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

Annex - Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on International Bills of Exchange and International Promissory Notes *[NOTE]

Introduction

1. The United Nations Convention on International Bills of Exchange and International Promissory Notes is the culmination of over fifteen years of work by the United Nations Commission on International Trade Law (UNCITRAL). It was adopted by the General Assembly of the United Nations under recommendation of the Sixth (Legal) Committee on 9 December 1988.

2. The Convention presents, for optional use in international transactions, a modern, comprehensive set of rules for international bills of exchange and international promissory notes that satisfy its requisites of form. The text of the Convention reflects a deliberate policy to minimize departures from the content of the two existing principal legal systems, preserving, where possible, the rules on which those systems concur. Where conflicts exist, requiring selection of one system's rule or a compromise solution, the Convention introduces a number of novel provisions. Another group of new rules are the result of special efforts to have the Convention respond to modern commercial needs and banking and financial market practices.

3. The Convention is divided into nine chapters. Chapter one deals with the sphere of application of the Convention and the form of the instrument covered by it. Chapter two contains definitions and other general provisions, including rules on the interpretation of various formal requirements. Chapter three addresses questions relating to the transfer of an instrument. The fourth chapter covers the rights and liabilities of parties to, and holders of, an instrument. The fifth chapter addresses issues relating to presentment of an instrument, dishonour by non-acceptance or non-payment, and the conditions precedent to parties' rights of recourse. The sixth chapter deals with the discharge of liability on an instrument. Chapters seven and eight deal with lost instruments and limitation of actions (prescription). Lastly, the final provisions are found in chapter nine.

A. - Background To The Convention

4. The United Nations Convention on International Bills of Exchange and International Promissory Notes is the result of a movement to establish a modern, self-contained international legal regime that would apply world-wide.

5. At its very first session held in 1968, UNCITRAL decided that, along with international sale of goods and international commercial arbitration, international payments should be given priority in its programme of future work. It was thought to be necessary to support the continued use of bills of exchange and promissory notes for international payments despite the emergence of new payment mechanisms. The new practices and techniques, it was thought, would not displace the more conventional usages, especially in the important role of financing international transactions.

7. The first step taken by UNCITRAL was to consult with the International Institute for the Unification of Private Law (UNIDROIT) which had previously addressed the subject of unification of the law relating to negotiable instruments. At the request of the Commission, UNIDROIT prepared a preliminary report on the possibilities of extending the unification of the law of bills of exchange and cheques. In the light of this report the Commission considered three possible methods of promoting unification. These were, firstly: encouraging a wider acceptance of the Geneva Conventions of 1930 and 1931

8. Before resolving to begin the preparation of a new negotiable instruments law the Commission decided to conduct an extensive enquiry to obtain the views and suggestions of Governments, banks and trading institutions. The Commission prepared and distributed an elaborate questionnaire and analysed the replies given by respondents regarding the present methods and practice for making and receiving international payments, the problems encountered in settling international transactions by means of negotiable instruments and the possible extent of new uniform law. From this analysis it became clear that the only viable approach would be to prepare a new set of rules that would be applicable to a special negotiable instrument for optional use in international transactions.

9. The secretariat of UNCITRAL first prepared a draft Uniform Law on International Bills of Exchange and a Commentary. The draft was later extended to include international promissory notes. The draft was revised over fourteen sessions of the Working Group on International Negotiable Instruments and three sessions of the Commission itself. At the fifth session of the Working Group it was decided to set forth the new provisions in the form of a convention rather than a uniform law.

10. The Convention as adopted aims at facilitating international trade and finance. Throughout the legislative process, attention was constantly given to the comments and observations of Governments, banks, trading and other interested circles.

11. The Convention does not purport to replace existing domestic legislation. It presents for optional use in international transactions a comprehensive body of rules that are theoretically and practically sound, being derived from a coherent set of principles fundamental to all known laws governing bills of exchange and promissory notes.

B. - Salient Features Of The Convention

1. Scope of application and form of the instrument

12. The Convention applies only to international bills of exchange and international promissory notes when they comply with certain requisites of form. In particular, the Convention applies only to international instruments that bear in both their heading and their text the words "International bill of exchange (UNCITRAL Convention)" or "International promissory note (UNCITRAL Convention)". The use of an instrument governed by the Convention is thus entirely optional. Ratification or accession by a State does not subject all international instruments issued in that State to the legal regime of the Convention but merely opens the door for bankers and merchants to opt for this new legal regime if they deem it preferable in their professional judgment.

13. The Convention provides its own definitions of the terms "bill of exchange" and "promissory note" and explicitly states the conditions on which a bill of exchange or promissory note is considered to be international. According to the Convention, a bill of exchange is a written instrument which: a) contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to its order

14. In order to qualify as an international bill under the Convention a bill of exchange must specify at least two of the places listed in article 2(1) of the Convention, and any two so specified places must be situated in different States. The places listed are: the place where the bill is drawn, the place indicated next to the signature of the drawer, the place indicated next to the name of the drawee, the place indicated next to the name of the payee, and the place of payment. In its turn an international promissory note must specify at least two of the places listed in article 2(2) of the Convention, whereby any two so specified places must be situated in different States. The places listed are: the place where the note is made, the place indicated next to the signature of the maker, the place indicated next to the name of the payee, and the place of payment.

15. There is one last requirement that an instrument fulfilling the above criteria must meet in order to qualify as an international instrument under the Convention: a certain place of importance situated in a State that is a party to the Convention must also be specified in the instrument. In the case of a bill of exchange, this will either be the place of drawing or the place of payment. In the case of a promissory note, this will be the place of payment. A State may however declare, in becoming a party to the Convention, that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States. This is the only reservation permitted under the Convention.

16. The legal rules provided by the Convention will apply even where there has been an incorrect or false statement in respect of a place indicated in an instrument. This rule continues the common policy of domestic bills of exchange laws to the effect that instruments are to be judged only by their texts - the material appearing on their faces. It may also be justified on the pragmatic ground that to have provided otherwise could have cast doubts on the applicability of the rules and eventually impaired the free circulation of international bills and notes. The Convention leaves to domestic laws the question of sanctions that may be imposed where such a false or incorrect statement has been made in an instrument.

17. Following the trend established by some domestic legal systems, the Convention does not allow negotiable instruments to be drawn on two or more drawees or to be issued payable to bearer. Neither restriction is significant in practice: nothing prevents a payee or special endorsee from making an instrument covered by the Convention payable to bearer by endorsing it in blank

18. The United Nations Convention on International Bills of Exchange and International Promissory Notes does not address international cheques. These have been the subject of a parallel project by UNCITRAL, the latest result of which is a draft Convention. The decision to draw up the uniform rules on international bills of exchange and international promissory notes and the uniform rules on international cheques as separate legal texts and not as a consolidated text was taken mainly to accommodate the civil law jurisdictions which have traditionally considered bills of exchange and cheques as separate instruments fulfilling separate functions. Work on the draft Convention on International Cheques was suspended in 1984, partly due to the fact that cheques were seen to play a less important role in international payments.

2. Interpretation of the Convention

19. An international body of rules aiming at the unification of a certain field of law can fulfil its ultimate purpose only if it is interpreted in a sensible and consistent manner by all legal systems applying it. Like many other international legal texts, the Convention requires courts that interpret it to have regard for its international character and for the need to promote uniformity in its application and the observance of good faith in international transactions.

20. The goal of uniform interpretation is furthered by a scheme called CLOUT (Case law on UNCITRAL texts) under which the secretariat publishes abstracts of court decisions or arbitral awards that apply any of the Conventions or Model Laws that emanate from the work of UNCITRAL.

3. The concepts of "holder" and "protected holder"

21. In its desire to win commercial acceptance and free circulation of its instruments in international commerce, the Convention firmly upholds the principle of negotiability.

22. When dealing with the rights of the holder of an instrument and the limitations of those rights by the claims and defences of others, the drafters of the Convention were obliged to make a selection between the radically distinct, and yet justifiable, approaches of the civil and common law systems. The solution chosen was a pragmatic two-tier system that distinguishes between a mere holder and a "protected holder". The rights of the protected holder are freed from the claims and defences of other persons to a greater extent than are the rights vested in the ordinary holder.

23. The solution, although similar in technique to the scheme found in common law jurisdictions, is in fact a compromise since it borrows from both the civil and common law approaches. For instance, under the Convention, a person is not prevented from becoming a holder by the fact that the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument. That regime resembles the civil law much more than the common law on the issue. Perhaps most important, a person who is in possession of an instrument as an endorsee, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, can be awarded the protected holder status even though any endorsement appearing on the instrument was forged or signed by an agent without authority.

24. The Convention enlarges the protection of protected holders by omitting any requirement that a protected holder has given value for the instrument. Furthermore, the test that one must meet in order to attain the protected holder status is easily passed, and every holder is presumed to be a protected holder unless the contrary is proved.

25. Although not so well protected as a protected holder, a mere holder is not totally unprotected from adverse claims and defences. The holder in fact derives an appreciable degree of protection from the rules contained in the Convention that allow certain types of claims or defences only if the holder had knowledge of them or if it was involved in a fraud or theft concerning the instrument.

26. Under the Convention, the transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument that the protected holder had. This so-called "shelter rule" again favours the negotiability of instruments. Its main value is to the protected holder as transferor since it preserves the value it invested in taking the instrument in the first place. It is not possible, however, for a holder who is not entitled to any protection to simply "wash" an instrument by transferring it to a protected holder and then taking it back.

4. Transfer warranties

27. Article 45 of the Convention brings light to an area that is dealt with in different ways in the existing principal legal systems. Moreover, it brings into the realm of negotiable instruments law a principle that is left to the general law of sales or contracts in civil law jurisdictions.

28. The rule provides that, unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, makes certain implied representations concerning the quality of the instrument and its lack of knowledge of any fact which could impair the right of the transferee to payment of the instrument against the primary obligor upon it. These representations as to quality consist of a warranty that the instrument does not bear any forged or unauthorized signature, and has not been materially altered. Liability of the transferor under the article is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

29. The liability provided for here is in part weaker and in part stronger than the one incurred by an endorser. It is weaker in that it does not guarantee payment of the instrument and is available only for the benefit of the immediate transferee

5. Guarantees and avals

30. The provisions of the Convention dealing with the liability of the guarantor comprise one of the most attractive features of the text. The Convention subtly recognizes both the aval, or the Geneva type of guarantee, and the other, weaker type of guarantee known in common law jurisdictions.

31. Article 46 of the Convention provides that payment of an instrument may be guaranteed either before or after acceptance, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person, who may or may not already be a party. A guarantee is expressed by the words "guaranteed", "aval", "good as aval" or words of similar import, accompanied by the signature of the guarantor, or effected by a signature alone on the front of an instrument. In fact, any signature alone on the front of an instrument, other than that of the maker, the drawer or the drawee, is a guarantee. The words by which a guarantee is expressed determine the nature of the obligation undertaken by the guarantor. In the absence of some notation specifying the party for whom a guarantee is given, the rules of the Convention interpret it as a guarantee for the drawee, acceptor or maker.

32. The crucial difference between the two types of guarantees recognized by the Convention ultimately lies in the defences that a guarantor may set up against a holder or a protected holder. They differ, depending upon the words used to express the guarantee (i.e. "guaranteed" produces a different result than "aval") and whether the guarantor is a financial institution. A guarantor that is a bank or other financial institution and which expresses its guarantee by a signature alone is considered to have contracted the stronger type of guarantee or "aval"

6. Other novel provisions of practical importance

33. The Convention introduces a number of provisions which ought to be of benefit in modern commercial practice. In this, the Convention reflects its recent development, while many of the rules found in the negotiable instruments laws of the world have not kept pace with changing business practices. The following novel provisions are of note:

(a) Instruments with floating rates of interest

34. The Convention permits instruments to bear interest at a variable rate without loss of negotiability. Where the technique used is in accordance with the requirements of the Convention, the sum payable is deemed to be a definite sum despite the variable rate of interest. For the protection of debtors, the Convention permits rates to vary only in accordance with provisions stipulated in the instrument and in relation to one or more reference rates published or otherwise publicly available. As a further protection, the reference may not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions. There may also be stipulated limits to the permissible variations in the interest rate.

(b) Rates of exchange outside instrument

35. The Convention also permits reference to a rate of foreign exchange outside an instrument, e.g. a bank exchange rate in a particular place at a certain date, in calculating the amount payable under the instrument. Here as well, the sum payable under an instrument is deemed to be a definite sum even though the instrument states that it is to be paid according to a rate of exchange indicated in the instrument or to be determined as directed by the instrument.

(c) Instruments payable in instalments

36. The Convention allows instruments that are subject to it to be made payable by instalments at successive dates. They may also contain an "acceleration clause", i.e. a stipulation that upon default in payment of any instalment the entire unpaid balance becomes immediately due.

(d) Instruments denominated and payable in a monetary unit of account

37. The Convention creates a regime in which instruments may be made payable in units of value other than the official currencies of nation States. This is accomplished by the definition of the terms "money" and "currency", which, in addition to referring to normal mediums of exchange adopted by Governments as their official currency, include a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, e.g. the Special Drawing Right (SDR) of the International Monetary Fund, the European Currency Unit (ECU) and the Unit of Account of the Preferential Trade Area for Eastern and Southern African States (UAPTA). The Convention also contains a useful new rule selecting a currency of payment where the monetary unit of account in which an instrument is payable is not transferable between the person liable to pay the instrument and the person receiving the payment.

(e) Foreign currency obligations

38. The Convention attempts to avoid the controversies that can arise with instruments drawn or made in a currency other than that of the place where payment is to be made. The text provides that, except for the cases where the drawer or maker of an instrument has indicated that it must be paid in a specified currency other than the currency in which the sum payable is expressed, payment must be made in the latter currency. Where applicable, this rule will prevent a debtor from discharging its obligation by payment in another currency, e.g. a local one. It should be of assistance by providing greater certainty in cases involving currency value fluctuations.

39. In an effort to avoid infringing on exchange control regulations and other provisions relating to the protection of the currency of a State, the Convention provides a number of modifying rules to apply in exceptional circumstances.

(f) Signature not in handwriting

40. Here as well the Convention attempts to adapt the law to new technology by providing that the word "signature" includes not only a handwritten signature, but also a facsimile or an equivalent authentication effected by any other means.

(g) Rules on lost instruments

41. New rules are provided concerning lost instruments. In particular, a party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify it for any loss which it may suffer by reason of the subsequent payment of the lost instrument.

(h) Short form of protest

42. The Convention relaxes the highly precise rules which are found in common law jurisdictions on protest. It also provides new common rules for Geneva States that lack regulation concerning the procedures for effecting protest. Under the new regime, unless an instrument stipulates that protest must be made, protest may be replaced by 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 must be to the effect that acceptance or payment is refused. The Convention also extends to four business days the period that is usually allowed to make protest.

(i) Uniform period of prescription

43. The Convention provides a single period of prescription or limitation of actions. It is set at four years for almost all actions arising on an instrument under the Convention. The only exception is that, where a party pays an instrument on which another was primarily liable, the party's action for reimbursement (recourse) is barred after one year.

(j) Drawing of instruments "without recourse"

44. The Convention contains a rule that should facilitate the practice of forfaiting. Under the new rule, the drawer of a bill may exclude or limit its own liability for acceptance or for payment by an express stipulation on the bill, e.g. by drawing the bill "without recourse". This stipulation will be effective only if another party is or becomes liable on the bill.

7. Final clauses

45. The final clauses contain the usual provisions designating the Secretary-General of the United Nations as depositary for the Convention. The Convention was open for signature until 30 June 1990 and remains subject to ratification, acceptance or approval by the signatory States. It is open for accession by all States which are not signatory States as from the date it was open for signature. According to article 89(1), the Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

46. The Arabic, Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic. The final clauses also contain provisions dealing with the implementation of the Convention in States having two or more territorial units where different legal systems apply.

Notes

*[NOTE]

This note has been prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only