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REPORT OF THE WORKING GROUP ON INTERNATIONAL PAYMENTS ON THE WORK OF ITS TWENTIETH SESSION (Vienna, 27 November - 8 December 1989)

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INTRODUCTION

1. At its nineteenth session, in 1986, the Commission decided to begin the preparation of Model Rules on electronic funds transfers and to entrust that task to the Working Group on International Negotiable Instruments, which it renamed the Working Group on International Payments. 1/

2. The Working Group undertook the task at its sixteenth session (Vienna, 2-13 November 1987), at which it considered a number of legal issues set forth in a note by the Secretariat. The Group requested the Secretariat to prepare draft provisions based on the discussions during its sixteenth session for consideration at its seventeenth session. At its seventeenth session (New York, 5-15 July 1988) the Working Group considered the draft provisions prepared by the Secretariat. At the close of its discussions the Working Group requested the Secretariat to prepare a revised draft of the Model Rules. At its eighteenth session (Vienna, 5-16 December 1988) the Working Group began its consideration of the redraft of the Model Rules, which it renamed the draft Model Law on International Credit Transfers. At its nineteenth session it continued its consideration of the draft Model Law.

3. The Working Group held its twentieth session in Vienna from 27 November to 8 December 1989. The Group was composed of all States members of the Commission. The session was attended by representatives of the following States members: Argentina, Bulgaria, Cameroon, Canada, Chile, China, Costa Rica, Czechoslovakia, Denmark, Egypt, France, Germany, Federal Republic of, Hungary, India, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Libyan Arab Jamahiriya, Mexico, Morocco, Netherlands, Nigeria, Singapore, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, and Yugoslavia.

4. The session was attended by observers from the following States: Australia, Austria, Bolivia, Colombia, Dominican Republic, Finland, German Democratic Republic, Ghana, Guatemala, Kuwait, Israel, Oman, Pakistan, Peru, Philippines, Poland, Republic of Korea, Romania, Saudi Arabia, Sweden, Switzerland, Thailand, Turkey, Uganda, and Ukranian Soviet Socialist Republic.

5. The session was attended by observers from the following international organizations: International Monetary Fund, Bank for International Settlements, Commission of the European Communities, Hague Conference on Private International Law, Banking Federation of the European Community, International Chamber of Commerce, Latin American Federation of Banks and Society for Worldwide Interbank Financial Telecommunication S.C.

6. The Working Group elected the following officers:

Chairman: Mr. José María Abascal Zamora (Mexico)

Rapporteur: Mr. Bradley Crawford (Canada)

7. The following documents were placed before the Working Group:

(a) Provisional agenda (A/CN.9/WG.IV/WP.43);

(b) International Credit Transfers: Comments on the draft Model Law on International Credit Transfers, report of the Secretary-General (A/CN.9/WG.IV/WP.44).

1/ See Official Records of the General Assembly, Forty-first Session, Supplement No. 17 (A/41/17), para. 230.

8. The Working Group adopted the following agenda:

(a) Election of Officers.

(b) Adoption of the agenda.

(c) Preparation of Model Law on International Credit Transfers.

(d) Other business.

(e) Adoption of the report.

9. The following documents were made available at the session:

(a) Report of the Working Group on International Payments on the work of its sixteenth session (A/CN.9/297);

(b) Report of the Working Group on International Payments on the work of its seventeenth session (A/CN.9/317);

(c) Report of the Working Group on International Payments on the work of its eighteenth session (A/CN.9/318);

(d) Report of the Working Group on International Payments on the work of its nineteenth session (A/CN.9/328).

I. CONSIDERATION OF DRAFT PROVISIONS FOR MODEL LAW ON INTERNATIONAL CREDIT TRANSFERS

10. The text of the draft Model Law before the Working Group was that set out in the report of the nineteenth session of the Working Group (A/CN.9/328, annex) and reproduced with comments in A/CN.9/WG.IV/WP.44.

Title of the draft Model Law

11. The title was accepted subject to later discussion as to the sphere of application as set out in article 1.

Article 1

Concept of internationality

12. Under one view the Model Law should apply to domestic as well as to international credit transfers. It was stated that credit transfers are increasingly processed through electronic systems that do not distinguish between transfers that are purely domestic and those that have contact with two or more countries. It would cause operational problems if two different laws were to apply to credit transfers passing through such systems, one law for transfers originating in or destined for another country and another for transfers that were purely domestic. It was also stated that legislators considering the Model Law would find it difficult to understand why a law should be adopted for international credit transfers when no State at the present time has enacted a comparable law for domestic credit transfers.

13. Under another view the sphere of application of the Model Law should continue to be restricted to international credit transfers. Even though the mandate given the Working Group would permit the Working Group to prepare a model law that would apply to domestic credit transfers, the entire context within which the Model Law was being prepared was that of international transfers. It was stated that the problems faced in international credit transfers were different from those faced in domestic credit transfers, particularly in regard to the risks for bank and customer alike. Some States that have a long history of domestic credit transfers might be willing to adopt the Model Law if it applied only to international credit transfers, but would not be willing to modify their existing practices and rules governing domestic credit transfers. It was also pointed out that, while there was a certain similarity to the problems faced by all countries in making international credit transfers, the problems faced by different countries and, therefore, the appropriate legal rules to govern domestic credit transfers, differed widely.

14. It was also suggested that, even if the Model Law was limited by its own terms to international credit transfers, some States might wish to apply it to domestic credit transfers as well. Therefore, it was not necessary to confront the difficult political problems that might be created by providing in the Model Law that it applied to all credit transfers.

15. After discussion the Working Group decided that the sphere of application of the Model Law should continue to provide that it would apply only to credit transfers that were international in character.

Criteria for internationality

16. There was general agreement that the test for the internationality of a credit transfer as formulated in article 1 was too restrictive. The examples set forth in A/CN.9/WG.IV/WP.44, article 1, comments 4 to 6 were noted. In those comments it was pointed out that a bank that originated a credit transfer for its own account was an originator and not an originator's bank, and a bank that received credit for its own account was a beneficiary and not a beneficiary's bank. Therefore, a transfer by the bank as originator to a second bank as beneficiary made by instructing their mutual correspondent bank to debit and credit the appropriate accounts held with it would not be an international credit transfer and the Model Law would not apply even if the three banks were in different States. That result would ensue because there would not be an "originator's bank" and a "beneficiary's bank" in different States.

17. In contrast, if the transfer in the example above was made on the instruction of a customer or for the benefit of a customer, there would be an originator's bank and a beneficiary's bank in different States and the Model Law would apply.

18. Under one view the transfer should be considered to be international and the Model Law should apply if any two parties, the originator, beneficiary or a bank were in different States. Under that view a credit transfer involving only one bank would be an international credit transfer so long as either the originator or the beneficiary was in a different State. A question was raised whether being in another State referred to physical location when the payment order was issued or whether it referred to residence.

19. Under another view the Model Law should apply only if the banking systems of two different States were involved. Under that view the Model Law would apply to the example in paragraph 16 but would not necessarily apply to the example in paragraph 18.

20. Furthermore, under that view the Model Law would also apply to the transfer in which the originator's bank and the beneficiary's bank were in the same State but an intermediary bank was in a different State. It was questioned whether a settlement bank in a second State should be considered to be an intermediary bank and whether such a transfer should fall within the Model Law. It was pointed out, however, that the originator's bank had the choice of routing the credit transfer through the bank in the second State, in which case that bank was undoubtedly an intermediary bank, or issuing two payment orders, one to the beneficiary's bank and the second to the bank in the other State instructing it to credit the account of the beneficiary's bank. It was stated that under the current definition of intermediary bank, a settlement bank would be an intermediary bank. (For further discussion whether a settlement bank should be considered to be an intermediary bank, see paragraphs 70 and 71, below.)

21. It was suggested that one means to cover the example set forth in paragraph 16 would be to change the definition of originator's bank and beneficiary's bank to include the cases where the originator or the beneficiary was itself a bank. That suggestion was objected to on the grounds that it would change the definitions from the meaning commonly ascribed to them in the banking community.

22. A concern was expressed that, whatever be the final criteria of internationality, a receiving bank should be able to tell from the payment order received that the Model Law would apply to the transfer. It was stated that it would be of particular importance that a receiving bank could do so when the operational rules under the Model Law were different from the equivalent operational rules under the otherwise applicable law. (For further discussion of the need for a receiving bank to be able to determine from the payment order whether the Model Law would apply to the transfer, see paragraphs 55, 56, 88 and 93, below.)

23. After discussion the Working Group decided to add to paragraph (1) the words "or, if the originator is a bank, that bank and its receiving bank are in different countries." (For the reaction of the Working Group to the change in the wording by the drafting group, see paragraph 194, below.)

Consumer transfers

24. There was no support for a suggestion that the footnote to article 1 needed to be made clearer that the Model Law does not cover consumer protection issues or to move the footnote into the body of the article.

Drafting suggestion

25. The Working Group agreed that, in order to remove a possible ambiguity, the text of paragraph (2) should refer to "branches of a bank" in different countries.

Article 2

26. The Working Group decided to add as a chapeau to the article the words "For the purposes of this law:".

Credit transfer

27. It was recognized that the definition of "credit transfer", as well as the associated definition of "payment order", was of particular importance since article 1 on the sphere of application of the Model Law provided that the law applied to credit transfers. Therefore, the definition of the term served in part to determine the sphere of application of the Model Law.

28. The discussion in the Working Group focused on a new proposed definition. That proposal, after certain drafting changes which did not go to its substance, was as follows:

> "'Credit transfer' means the series of operations, beginning with the originator's payment order, made for the purpose of placing funds at the disposal of a designated person. The term includes any payment order issued by the originator's bank or any intermediary bank intended to carry out the originator's payment order. A credit transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order."

29. It was pointed out that the proposed definition differed from the existing definition in that a credit transfer was defined in terms of the actions taken in regard to payment orders and not in terms of the movement of funds. It was stated that any remaining problems in regard to determining the types of transfers to be covered could be handled in the definition of "payment order". At the same time that the proposed definition of "credit transfer" was submitted to the Working Group, a new definition of "payment order" was also submitted.

30. The Working Group accepted the first two sentences of the proposal subject to certain drafting suggestions already incorporated into the definition as set out in paragraph 28, above. The primary discussion was on the third sentence.

31. It was stated that the third sentence was appropriate for two reasons: First, while the time of completion was implied in such provisions as articles 11 and 14, the draft Model Law did not currently state clearly when a credit transfer was completed. Secondly, since the definition would state when a credit transfer began, it would be logical for the definition to state when the credit transfer ended. The proponents of the proposed definition agreed, however, that it was not essential for the third sentence to be part of the definition of "credit transfer".

32. In opposition to including the third sentence it was said that a statement as to the moment of completion of a credit transfer was too important to be found in a definition; it should be in a completely separate provision. Opposition was also expressed to completion of a credit transfer being determined by acceptance of a payment order by the beneficiary's bank. It was recognized, however, that that question was a matter of substance which did not have to be considered at that time.

33. The Working Group decided to adopt the definition as proposed but to place the third sentence in square brackets. Placing the third sentence in square brackets was intended to indicate that neither the substance of a rule as to when a credit transfer was completed nor the location of such a rule was being decided at that time.

Payment order

34. The Working Group was in agreement that the definition of "payment order" should follow immediately after the definition of "credit transfer" since, in effect, the definition of a "credit transfer" would depend on the definition of a "payment order".

35. The following definition of "payment order" was proposed in association with the definition of "credit transfer" that had been adopted:

> "'Payment order' means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:
>
> (i) the instruction does not state a condition to payment to the beneficiary other than the time of payment,
>
> (ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and
>
> (iii) the instruction is transmitted directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank."

36. In regard to the chapeau, it was agreed that the words "to pay, or to cause another bank to pay ... to a beneficiary" should be replaced by "to place at the disposal of a designated person".

37. It was stated that the list of means of transmitting a payment order was incomplete as it left no room for further developments of technology, such as light impulses over fiber optical cable. Furthermore, it was not clear whether the current list would be interpreted to include the manual transmission of magnetic tapes. It was suggested that those examples showed that it would be preferable not to list the means of transmission but to use some more general formula.

38. A substantial discussion took place as to the appropriateness of including oral payment orders in the list. It was noted that in some countries banks were not permitted to accept oral payment orders. In other countries there was no prohibition on oral payment orders, and banks accepted them at their own risk. In some of those countries oral payment orders transmitted by telephone were current practice, though they were relatively rare.

39. It was suggested that in place of a list of permissible means of transmitting a payment order the words "by any means" might be used. The prevailing opinion was that any reference to the means of transmittal might be deleted entirely. If an issue arose, it would be settled under national law.

40. In favour of the proposed provision that an instruction was a payment order only if it did not state a condition to payment to the beneficiary other than the time of payment, it was stated that the Model Law should be designed for modern high-speed, low-cost funds transfer systems. Conditional instructions could not be handled automatically but required human intervention. Unless conditional instructions were eliminated from the definition of payment orders even such matters as an instruction to open a letter of credit would be a payment order. Furthermore, if conditional instructions were considered to be payment orders, at least article 9 on the time within which a receiving bank had to act would have to be re-considered, and perhaps other articles as well.

41. In opposition to the proposed provision it was stated that conditional payment orders were common and would continue to exist whether or not they were considered to be payment orders under the Model Law. Many conditions were easy to comply with. Banks would not normally be willing to accept payment orders with conditions attached whose fulfilment could not easily be verified. The consequence of considering conditional payment orders not to be payment orders under the Model Law might be to exclude the entire credit transfer from the sphere of application of the Model Law. That would be prejudicial to subsequent banks which would have no way of knowing that the originator's order had been conditional.

42. Various suggestions were made as to how a conditional payment order might be made subject to the Model Law but with its effects limited to the originator's bank. It was stated that a condition placed by the originator on his order to the originator's bank would not be passed on by that bank in its own payment order to its receiving bank. It was suggested that one way of arriving at the proper result would be to consider the condition in the originator's payment order to be a collateral agreement that bound the originator's bank but that did not affect the validity of that bank's own payment order, even if issued in violation of the condition.

43. It was stated that use of the word "directly" in the third element of the definition of "payment order" would eliminate from the definition, and therefore from the sphere of application of the model law, certain transfers that should be included in which a payment order was transmitted by the originator to the beneficiary for further transmission to the originator's bank.

44. After discussion a small working party was charged with the task of re-drafting the proposed definition in the light of the discussion.

45. The small working party proposed the following definition of "payment order":

> "'Payment order' means an instruction to a receiving bank to place at the disposal of a designated person a fixed or determinable amount of money if:
>
> (i) the instruction contains no conditions other than conditions imposed by the originator which are to be satisfied on or before the issue of a payment order by the originator's bank,
>
> (ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender,

(iii) the instruction is to be transmitted directly to the receiving bank, or to an intermediary, a funds transfer system, or a communication system for transmittal to the receiving bank, and

(iv) the instruction is not intended to establish a letter of credit."

46. In order to implement the fourth element of the proposed definition the small working party also proposed a definition of "letter of credit" adapted from the Uniform Customs and Practice for Documentary Credits, article 2 (International Chamber of Commerce, Publication No. 400) as follows:

"'Letter of credit' means any arrangement, however named or described, whereby a bank acting at the request and on the instructions of a customer,

(i) is to make a payment to or to the order of a third party or is to pay or accept bills of exchange drawn by the third party, or

(ii) authorizes another bank to effect such payment, or to pay, accept or negotiate such bills of exchange against stipulated documents, provided that the terms and conditions of the arrangement are complied with."

47. It was reiterated that the definition of "payment order", like that of "credit transfer", was of particular importance because it helped determine the sphere of application of the Model Law. Furthermore, the obligations of receiving banks were set out in terms of the actions they had to take in regard to payment orders they received. Therefore, if the message they received did not meet the definition of a payment order, the Model Law would impose no obligations on the receiving bank in regard to that message. In addition, under the Model Law a receiving bank other than the beneficiary's bank that accepted a payment order was obligated to issue its own payment order. If the message it issued did not meet the definition of a payment order, the bank would have failed in its obligations under article 6.

48. A question was raised whether an instruction was for a fixed or determinable amount of money, and therefore whether the instruction was a payment order, if the instruction was to credit the beneficiary's account for 100,000 francs, without stating whether Swiss, French or Belgian francs were envisaged and the instruction was issued in and sent to a country other than one of the those three. In reply it was stated that it was clear that in such a case the receiving bank should have a duty under article 6 to enquire of its sender as to the meaning of the order. It was decided that when the Working Group considered article 6, it would provide for that case and other similar questions of ambiguity. (See paragraph 132, below.)

49. The chapeau of the proposed definition was adopted with the addition of the words "by an identified sender".

50. It was noted that the new formulation of the provision on conditions deleted any reference to the time of payment, which was said not to be a condition but was a term of the instruction. The new formulation also provided that an instruction could be considered to be a payment order only if any conditions contained therein were to be satisfied on or before the issue of a payment order by the originator's bank. If an instruction contained a condition that had to be satisfied prior to action by a bank subsequent to the originator's bank, the instruction was not a payment order. It was said that a transfer based upon an instruction containing such conditions was outside the sphere of application of the Model Law.

51. It was explained that a payment order issued by the originator's bank might on occasion contain a condition that had to be satisfied before the originator's bank was authorized to act, since on occasion the bank might simply copy the instruction received. The copying of such a condition would not take the instruction of the originator's bank outside the definition of payment order. Furthermore, it was intended that the receiving bank of the payment order from the originator's bank would have no obligation to enquire whether the condition had been fulfilled. The payment order it received should be considered to be clean. The Working Group did not adopt a proposal that a separate article be inserted to specifically state that result.

52. Some opposition was expressed to even such a restricted recognition of conditional payment orders as falling within the sphere of application of the Model Law. It was noted that article 5(1) did not currently give the originator's bank any extra time within which to consider conditional orders before the bank was deemed to have accepted the order. Article 9 was also not of help because it provided only the amount of time that a bank had to execute an order that had been accepted.

53. A concern was expressed as to whether the understanding as to what was a condition was the same in civil law legal systems as it was in common law legal systems. It was said that that concern might be overcome by appropriate drafting.

54. The opposition to using the word "directly" in the third element of the definition that had been previously expressed was restated. The drafting group was requested to find another term to express the idea.

55. It was proposed that the definition of a payment order should include the requirement that it include an indication of the identity of the originator's bank. It was said that only in that way would a subsequent bank be able to tell that the payment order received was in the context of an international credit transfer that would be subject to the Model Law.

56. There was general agreement that the problem the proposal was intended to overcome was important. However, while the proposal received some support, perhaps to be placed in a separate article, the prevailing view was that indication of the originator's bank should not be included as part of the definition of a payment order. It was stated that such a requirement might be appropriate if the term being defined was "international payment order" rather than "payment order". It was also stated that the problem would be overcome if national legislators used the Model Law as the basis for their domestic law covering all credit transfers. A particular problem with the proposal was that an intermediary bank that did not include the indication of the originator's bank would not have issued a payment order. The entire scheme of the Model Law would be disturbed, including such matters as when the credit transfer initiated by the originator was completed.

57. The proposed definition of "payment order" was adopted as amended.

58. The proposed definition of "letter of credit" was not adopted. It was stated that such a definition was not necessary in the Model Law for the limited purpose for which it had been proposed. Moreover, the definition did not include the important provision found in article 10 of the Uniform Customs and Practice that the credit constituted a definite undertaking of the issuing bank to pay or that payment would be made if the stipulated documents were presented.

Originator

59. The definition was adopted.

Beneficiary

60. The definition was adopted with the words "the ultimate person intended" changed to "the person designated in the originator's payment order".

Sender

61. The definition was adopted with the word "sends" changed to "issues".

Bank

62. It was stated that the current definition of a bank was not clear in several respects. The term "financial institutions" might be understood in different ways in different countries, particularly if there was domestic legislation that applied to financial institutions generally. A second source of difficulties was that the definition required a determination whether the institution engaged in credit transfers for other persons as an ordinary part of its business. It was pointed out that the words "engages in credit transfers for other persons" might be understood to mean that financial institutions that engaged only in transmitting payment orders but not in moving funds would be included in the definition of a "bank".

63. To overcome those problems the following definition was suggested:

> "'Bank' means an entity which, as an ordinary part of its business, engages in executing payment orders and moving funds to other persons."

64. There was discussion whether it was intended that post offices would be included under the definition of banks, thereby making them subject to the Model Law. It was noted that in many, but not in all, countries the post office furnished an active credit transfer service. In many cases the post office also took deposits, thereby fulfilling most of the traditional functions of a bank.

65. Under one view the Model Law was intended to govern credit transfers executed by the traditional banking system. Even where the post office engaged in credit transfers for others, it was subject to different rules arising out of its administrative status. Therefore, the definition of a bank should not include such entities as the post office and should be restricted to a more traditional concept. It was also pointed out that in a number of countries commercial entities such as petroleum companies were establishing point-of-sale systems. At least in Europe it could be expected that those point-of-sale systems would operate internationally. However, they raised problems that were so different from those intended to be covered by the Model Law that it should be clear that they were excluded from the sphere of application.

66. Under the prevailing view the Model Law was intended to govern a service and not particular systems. If the post office, or any other type of entity, offered a credit transfer service of the same nature as did banks, it was important that it be subject to the same rules as were the banks. If the banks, for example, were subject to the money back guarantee of article 11 but the post office was not, there would be an imbalance in the competitive situation between the two.

67. As to the point-of-sale systems, it was said that it was unlikely that they would fall under either the current or the proposed definition of a bank. In any case, it was likely that they would be subject to specific legislation governing the rights and obligations of consumers referred to in the footnote to article 1.

68. After discussion the proposed definition was adopted.

Receiving bank

69. The definition was adopted.

Intermediary bank

70. A proposal was made that a settlement bank that was not in the chain of banks between the originator's bank and the beneficiary's bank should not be considered to be an intermediary bank. It was said that settlement was a separate function from that of executing the credit transfer as instructed in the originator's payment order. A single settlement might be for a number of transfers with different information in the settlement payment order than in the payment orders for which settlement was being made, and the settlement might also be on a net basis. It was also noted that ISO 7982-1 defined an intermediary bank as a bank "between the receiving bank and the beneficiary's bank through which the transfer must pass if specified by the sending bank."

71. The proposal was not adopted. Concern was expressed that the exclusion of settlement from the definition of intermediary bank might also exclude the settlement from the sphere of application of the Model Law, at least where the three banks involved in the settlement were all in the same country, and that as a result the rights of the originator's bank to the money back guarantee in article 11 might be affected. As to the ISO definition, it was noted that it had been drafted in the context of the messages passing between two banks and that in that context the only intermediary banks of relevance were those specified in the payment order as banks through which the credit transfer would have to pass on the way to the beneficiary's bank. Article 6(5) used the term "intermediary bank" in the same sense as did the ISO definition, but other articles did not.

72. A proposal was adopted to delete the words "any bank executing a payment order" and to insert the words "any receiving bank". The following proposal was referred to the drafting group for its consideration:

> "'Intermediary bank' means any bank other than the originator's bank and the beneficiary's bank that is involved in the process of receiving and executing the payment order."

Funds or money

73. It was noted that the definition included the ECU.

Authentication

74. The Working Group considered the proposed definition of "authentication" contained in A/CN.9/WG.IV/WP.44, comment 23 to article 2, which was as follows:

"'Authentication' means a procedure established by agreement to determine whether all or part of a payment order or a revocation of a payment order was issued by the purported sender or whether there has been an error in its transmission or in its content."

75. It was noted that the proposed revision was intended to cover two separate problems: extension of the definition of authentication to revocations under article 10 and extension of the definition of authentication to procedures under article 4(2) to determine whether there had been an error in the transmission of a payment order or in its content.

76. The Working Group was in agreement that if the scheme for revocation of payment orders currently set out in article 10 remained as it was, the authentication procedure of article 4 should apply. Therefore, the proposed definition of "authentication" through the words "was issued by the purported sender" was adopted as suggested. However, since there remained opposition in the Working Group to the basic scheme of article 10, the words "or a revocation of a payment order" were placed in square brackets, pending further discussion in the context of article 10.

77. As to the extension of the definition of "authentication" to errors in transmission or in the content of a payment order, there was widespread support for the view that the extent to which a receiving bank should be responsible for detecting such errors should be covered by the Model Law. Under one view the suggested approach in regard to the definition and the associated suggested modification of article 4(2) set out in A/CN.9/WG.IV/WP.44, comment 10 to article 4 were appropriate.

78. Under the prevailing view the problems of authentication of a payment order as to its source and verification of the accuracy of its contents were two different problems as a matter of legal concepts, even if in some circumstances the same technical procedures might be used for both. In respect of the source of a message, the basic rule in article 4(1) was that the purported sender was not bound by a payment order unless he had in fact issued it or authorized its issue. From a legal point of view the authentication defined in article 2 and used in article 4(2) served to describe situations in which the purported sender might be bound by a payment order in spite of the fact that it had not been issued or authorized by him.

79. In respect of errors in a payment order and corruption of the contents of a payment order during its transmission, it was said that the general rule was that the sender was bound by what was received by the receiving bank. If it was intended that the Model Law relieve the sender of that responsibility because of the availability of a procedure agreed between the sender and the receiving bank that would detect the error or corruption, that intention should be set out separately in the Model Law. Therefore, the Working Group did not accept the part of the proposed definition relating to errors and corruption of a payment order.

Cover

80. In connection with the later discussion of article 5(2)(b) an amendment to that article was adopted that eliminated the use of the word "cover". Since it was understood that an identical amendment would be made to article 7(2)(b), it was decided that there was no further use for the term and the definition was deleted, subject to any later amendments to substantive provisions that re-introduced the term. (See paragraph 126, below.)

Execution date, pay date

81. Discussion of those definitions was deferred pending discussion of article 9. (See paragraph 182, below).

Value date

82. The definition was deleted since the term was no longer used in the Model Law.

Article 3

Proposed definition of "beneficiary's bank"

83. In connection with article 3(v), which provided that a payment order was required to contain the identification of the beneficiary's bank, it was proposed that a definition of "beneficiary's bank" be adopted as follows:

> "'Beneficiary's bank' means the last receiving bank involved in a credit transfer."

84. It was said that such a definition would be useful since, although the beneficiary would normally have an account at the beneficiary's bank, that was not always the case.

85. It was also suggested that the definition should make it clear that the beneficiary was also considered to be the beneficiary's bank when the beneficiary was a bank. It was pointed out that this was not the case under the current text since the beneficiary, whether or not a bank, does not receive a payment order; instead it receives an advice of credit.

86. The proposal was not adopted.

Consideration of article

87. Several suggestions were made as to additional data elements that might be considered for inclusion in article 3 as mandatory data elements. It was suggested that information on cover be included. It was also suggested that indication of the originator be included since that information was necessary for article 14(2) on discharge of the underlying obligation to function properly.

88. It was suggested that the identification of the originator's bank be included in article 3, because subsequent banks would need to know whether the credit transfer was international and fell within the sphere of application of the Model Law. For the same reason it was also suggested that in view of the amendment to article 1(1) it would be necessary to specify on the payment order whether the originator was a bank. It was stated that adoption of the proposals should not affect the application of the Model Law to the credit transfer; they were intended only to assure that subsequent receiving banks would receive the information they would need. In response to an enquiry as to whether requiring such information on payment orders would not require banks to include information that would otherwise be considered to be irrelevant, it was stated that the SWIFT and ISO formats had an applicable field, but that it was an optional rather than a mandatory field and should be used when the sending bank and the originator's bank were not the same. Other communication or funds transfer systems might not have such a field currently available.

89. The Working Group discussed what the consequences would be if a sender failed to include one of the mandatory data elements listed in article 3. It was noted that comment 1 to article 3 in A/CN.9/WG.IV/WP.44 stated that the Working Group had included the set of minimum mandatory data elements to fulfil an educational function.

90. It was stated that a message that failed to include a mandatory data element listed in article 3 was not a payment order. In reply it was stated that only the data elements contained in the definition of a payment order in article 2 were necessary for a message to be a payment order. The drafting group at the nineteenth session of the Working Group had moved the data elements currently found in article 3 from the definition of a payment order in article 2. That had been done in order to avoid the conclusion that a message that otherwise qualified as a payment order was not a payment order merely because it failed to include one of those data elements.

91. It was stated that, if a payment order failed to include the name of the sender as required by article 3(i), it would be impossible for the receiving bank to notify the sender of the rejection of the payment order as required by article 5(1). It was also stated that the consequences arising out of the omission of any relevant data element that made it impossible for the receiving bank to execute the payment order should be considered under article 6 or 8.

92. The view was expressed that article 3 should be deleted. In contrast to the bill of exchange, where minimum mandatory data elements were necessary because of the negotiable character of a bill of exchange, no such necessity existed in respect of a payment order.

93. After discussion the Working Group decided to delete article 3 and to consider the problems of incomplete payment orders in articles 5 to 8, where the problems arose, and to address in some other provision the need for payment orders to disclose to receiving banks that the payment order formed part of an international credit transfer.

Article 4

Paragraph (1)

94. The Working Group considered whether to adopt Variant A or Variant B of the paragraph. It was generally agreed that there was no intended difference in substance between the two variants. It was stated that, while Variant A spoke of the applicable law and Variant B did not, the determination of the law applicable to the question whether the actual sender of a payment order had the power to bind the purported sender by issuing the payment order was an inherent problem, whichever of the two variants was chosen. It was also stated that it would not be appropriate to set forth in the Model Law a choice of law rule on this point, although the applicable law would undoubtedly be that of the purported sender of the payment order.

95. After discussion of various points of terminology in the two variants, it was decided to adopt Variant B. The drafting group was requested to consider the terminology in the different language versions to ensure uniform meaning.

96. As had been decided in respect of the definition of "authentication" (see paragraph 76, above), the words "or a revocation of a payment order" were added in square brackets pending the subsequent discussion to be held on article 10.

Paragraph (2)

97. The suggestion was made that subparagraph (a) should state a more precise test than that the authentication provided was "commercially reasonable". Under one view the word "reasonable" always had to be interpreted in the context of the factual situations presented. Under that view the word "commercially" either was redundant or, if it was not redundant, it would confuse the courts. Under another view the word "commercially" would help explain the context in which the determination as to whether the authentication was reasonable should take place. It was stated that any agreement between banks as to the authentication to be used for payment orders between them would be reasonable.

98. Under yet another view many legal systems were unfamiliar with the concept of "reasonable" and would find it difficult to interpret, whether or not the word was modified by "commercially". In that regard it was suggested that any commentary written to accompany the Model Law once it was adopted by the Commission might give an indication as to the factors that might be taken into account. It was also pointed out that several conventions that had been prepared by the Commission used the term "reasonable".

99. Following discussion the Working Group decided not to modify subparagraph (a).

100. A proposal was made to delete subparagraph (b). In support of the proposal it was stated that the obligation of the sender to pay the receiving bank arose in article 4(4) on acceptance of the payment order by the receiving bank and that the issue as to whether there was cover available for the payment order should not enter into the definition of "authentication".

101. In opposition to the proposal it was stated that paragraph (2) provided a broad rule that a purported sender might be bound by a payment order that he had neither issued nor authorized; subparagraph (b) gave him one additional element of protection. Furthermore, paragraphs (2)(b) and (4) considered different problems in that paragraph (2)(b) set forth the requirement that cover be available under the terms there described as a condition precedent to the purported sender being bound on a payment order under paragraph (2). Following discussion the proposal was not adopted.

102. It was decided to change the words in subparagraph (b) "are to be" to "may be" so that the subparagraph would cover situations in which the receiving bank had the authority, but not the obligation, to execute payment orders despite the absence of a withdrawable credit balance or an authorized overdraft.

Paragraph (3)

103. Following several interventions in favour of Variant A and several in favour of Variant B, a third proposal was made based upon the chapeau of Variant A, subparagraphs (a) and (b) of Variant B followed by subparagraph (b) of Variant A. The proposal read as follows:

> "A purported sender that is not a bank is, however, not bound by a payment order under paragraph (2) if
>
> (a) the actual sender was a present or former employee or agent of the receiving bank, or

(b) the actual sender was a person acting in concert with a person described in subparagraph (a), [or] [and]

(c) the actual sender had gained access to the authentication procedure without fault on the part of the purported sender.

104. A certain amount of support was given for the proposal if subparagraph (c) was in the alternative, i.e. if it was a third possible means for the sender who would otherwise be bound by the payment order under paragraph (2) to be free of that obligation. In general that position was taken by those delegations who otherwise supported Variant A.

105. A certain amount of support was also given to the proposal if subparagraph (c) was in the conjunctive, i.e. the sender would have to prove either (a) or (b) plus (c). In general that position was taken by those delegations who otherwise supported Variant B. It was recognized that adoption of this version of the proposal would require restructuring the presentation of the paragraph.

106. Different suggestions that were made in regard to the proposals before the Working Group were that the rule in paragraph (3) should be subject to the contrary agreement of the parties; that the bank should have the burden to justify a debit to the sender's account when the sender was a depositor of the receiving bank, but that such a rule was not appropriate when the sender was not a depositor of the receiving bank; and that the risk of loss from unascertainable events should be on the receiving bank when the sender was not a bank and the sender showed that he had taken all reasonable precautions.

107. During the discussion it was suggested that the Working Group should also have before it Article 4A-203(2) and (3) of the Uniform Commercial Code in the form in which Article 4A had recently been approved for adoption in the United States of America. Those two paragraphs are as follows:

"(2) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(3) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by (i) a person entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure [equivalent to authentication in the terminology of the Model Law], or (ii) a person who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software or the like."

108. The Working Group decided to leave the text unchanged and to return to the question at its next session.

Paragraph (4)

109. The Working Group discussed whether the paragraph was correct when it provided that payment by the sender for the payment order was due on the execution date, since the execution date was defined in article 2 as the date the receiving bank was obligated to execute the order and not as the date when the receiving bank had performed its obligation. Under one view the sender should not be obligated to pay for its payment order until the receiving bank had acted upon it. Under another view the sender should be obligated to pay on the execution date, but the sender should receive interest under article 12 for the period of any delay of the receiving bank to execute the order.

110. It was suggested that a word other than "pay" should be used and that, in any case, it should be made clear that the obligation in article 4(4) referred only to the amount of the payment order and not to any costs or charges of the receiving bank. Such costs or charges should not be dealt with in the Model Law, except perhaps in respect of the problem treated in article 14(3). Another suggestion was that articles 4(4) and 14(4) were incompatible as to the time indicated since article 14(4) spoke of the acceptance of the payment order by the receiving bank. It was further suggested that the paragraph should be clear that the receiving bank could not contract out of the rule in the paragraph unless the sender was a bank.

111. The Working Group decided to adopt the paragraph and to refer the various drafting points to the drafting group.

Article 5

Proposed definition

112. A proposal was made to introduce a definition of acceptance as follows:

"'Acceptance' means the events set out in articles 5(2) and 7(2)."

113. In support of the proposal it was said that many of the delegations that had expressed their opposition to use of the concept of "acceptance" in past sessions of the Working Group had done so on the basis that although the concept was useful, the term was not because it already had a widely used technical meaning. Others objected to the concept itself because they were concerned about the effect the concept might have on other aspects of banking law. Therefore, if the word was defined, its use would be clearly limited to its role as a convenient drafting technique for the purposes of this Law. It was said that the definition as drafted was awkward, but that it was difficult to draft a better definition without the danger of impinging upon decisions that had already been made.

114. The proposal received no support.

115. In connection with the consideration of article 6 in paragraph 128, below, a new paragraph was added to article 5 indicating that the article applied to receiving banks that were not the beneficiary's bank.

Paragraph (1)

116. It was suggested that the receiving bank should not have to notify the sender of a rejection of the payment order if the payment order was so incomplete that it could not be executed. In reply it was stated that the suggestion was too broad. It was said that incomplete data as to the amount of a payment order or the identification of the beneficiary was similar to an inconsistency in the amount of a payment order or the identity of the beneficiary as expressed in words and in figures. It was said that, since articles 6(3), 8(2) and 8(3) required the receiving bank or the beneficiary's bank to notify the sender of the inconsistency, the same rule should apply in the case of similar incomplete data.

117. In respect of a payment order that did not contain the identification of the sender, it was decided that article 5(1) should be amended to make it clear that no notice of rejection would have to be given by adding the words "unless there is insufficient information to identify the sender."

118. A proposal was made that a receiving bank should have to notify the sender of a rejection of a payment order only if the sender and the receiving bank had an account relationship with one another. The proposal did not receive sufficient support to be adopted.

119. It was suggested that a receiving bank should have to give notice of rejection of a payment order even if the reason for the rejection was that there were insufficient funds. It was stated that there were many reasons why a sender might not know that it did not have sufficient funds to cover a payment order that it had sent. It was said that it was good banking practice for the receiving bank to notify the sender whenever the sender's payment order was not going to be executed by the execution date.

120. Under another view the receiving bank should have to give notice of rejection in the rare case that it was furnished with cover that was apparently satisfactory but with which the bank was not satisfied, perhaps because the cover would put the receiving bank's credit balance with the settlement bank beyond the credit limit previously established for that bank. It was said that it was a different situation if the receiving bank had not received a cover message; in that case it should have no obligation to give notice.

121. In opposition to the suggestion that notice should be given in all cases of failure to execute the payment order by the execution date, it was stated that the consequence of failure to give a required notice was too severe when the reason for the failure to execute the order was insufficient funds. The case was hypothesized of a payment order for Swiss francs 100,000,000 that was not executed because of insufficient funds. If a clerk at the receiving bank failed by error to give the required notice, it was said that it would not be appropriate for the Model Law to provide that the payment order had been accepted and that as a result the receiving bank would have to pay SF 100,000,000 out of its own funds.

122. In order to accommodate the different concerns a proposal was made that the words "unless one of the reasons is insufficient funds" should be deleted from article 5(1) and that article 5(2)(a) should also be deleted. The result would be that the receiving bank would have a duty to notify the sender of rejection of a payment order whenever the order was not executed by the

execution date, but the failure to give the required notice would result in the damages envisaged by article 12 and not in acceptance of the payment order. That proposal was not adopted by the Working Group.

123. The Working Group accepted a proposal to delete the reference to insufficient funds in article 5(1) but to add it to article 5(2)(a). As a result, the obligation to notify exists in all cases in which a receiving bank does not execute a payment order by the execution date. However, the failure to give the required notice would not lead to acceptance of the payment order if the reason for the failure to execute the order was insufficient funds. (See paragraph 175, below.)

124. The Working Group noted the statement in A/CN.9/WG.IV/WP.44, comment 9 to article 5 that no change in policy was intended by the drafting group at the nineteenth session of the Working Group when it deleted the provision in article 5(1) that the obligation to give notice was subject to the contrary agreement of the sender and receiving bank.

Paragraph (2)

125. Subparagraph (a) was adopted as modified in paragraph 123, above.

126. Subparagraph (b) was amended by replacing the words "without notification that cover is in place" by the words "when the payment order is received". In support of the amendment it was said that it reflected more accurately the nature of the agreements that were envisaged by the subparagraph.

127. Subparagraphs (c) and (d) were adopted.

Article 6

Paragraph (1)

128. A question was raised whether the paragraph was necessary since the title of the article already stated that the article applied to the obligations of receiving banks other than beneficiary's banks. In reply it was stated that the titles were not part of the Model Law itself. After discussion the Working Group decided to retain the paragraph and to put a similar paragraph into article 5.

Paragraph (2)

129. Under one view paragraph (2) should be deleted. In support of that position it was said that an excessive burden was being placed on the receiving bank to require it to notify the sender that a misdirected payment order had been received when the error was that of the sender, or of a party earlier in the credit transfer chain. It was said that the Model Law was being prepared for modern means of transmitting payment orders. In that environment the addressing of payment orders was done primarily by bank identification numbers and not by name.

130. Under another view the paragraph involved two duties: the first was to detect that the payment order was misdirected and the second was to notify the sender of the misdirection. It was said that the Model Law should not set forth a duty to detect the misdirection but that it was appropriate to require notification once the misdirection had been detected.

131. Under the prevailing view the provision was appropriate and should be retained. It was stated that the Model Law would apply not only to computer-to-computer payment orders but also to telex payment orders.

New paragraph

132. It was noted that an instruction to a receiving bank might not have all the data elements necessary to be a payment order or, alternatively, might have the data elements necessary to be a payment order but not be executable. (See paragraph 48, above.) In accordance with the policy already expressed in articles 6 and 8, the Working Group decided to adopt and refer to the drafting group for possible revision a new paragraph that would read substantially as follows:

> "When an instruction does not contain sufficient data to be a payment order or, even though a payment order, it cannot be executed because of insufficient data, but the sender can be identified, the receiving bank is obligated to notify the sender of the insufficiency."

Paragraph (3)

133. Under one view the paragraph should be changed to indicate that in case of a discrepancy as to amount, the traditional rule in banking law should be applied that the words controlled over the numbers. One good reason for such a rule was that, if there was an error, it was more likely to be in the numbers than in the words. Under another view the traditional banking rule should not apply in the context of modern electronic means of transmitting payment orders where the payment orders were processed by number. In reply it was said that the paragraph as drafted was a compromise; receiving banks that processed the amount of the payment order by number only were permitted to contract with their customers to that effect.

134. Under yet another view the paragraph was too restricted in that the amount might be represented in clear text by numbers but also be part of a code. In that case the discrepancy might be between two sets of numbers. It was suggested that there should be a reference only to a discrepancy in the amount without saying how that discrepancy might appear.

135. The Working Group decided to retain the paragraph and to refer the last suggestion to the drafting group. The drafting group was also asked to consider inserting a phrase that the duty to notify existed only if the sender could be identified.

Paragraph (4)

136. Paragraph (4) was adopted. A suggestion that paragraph (4) be placed before paragraph (2) was referred to the drafting group.

Paragraph (5)

137. The use of the term "good faith" was questioned. It was said that different legal systems interpreted the term in different ways. It was suggested that the paragraph be re-drafted to use the term "reasonable", which had already been used in a number of texts prepared by the Commission.

138. In response it was stated that "good faith" or an equivalent was necessary in the paragraph, since the receiving bank might have to use its judgment in a situation in which it had no individual advantage to be gained by varying from the instructions received. Its judgment should not later be questioned in such a situation.

139. Under another view a receiving bank that had accepted a payment order that contained instructions should be required to follow those instructions unless it was impossible to do so. Under yet another view the receiving bank should be permitted to use another funds transfer system or communications system under the conditions described in paragraph (5) but should be bound to use any intermediary bank specified by the sender. The reason given was that the sender was more apt to have reasons of its own, unknown to the receiving bank, for specifying an intermediary bank than for specifying a funds transfer system or communications system.

140. After discussion the Working Group decided to retain the paragraph and to refer the various drafting suggestions to the drafting group.

Branches as banks

141. The Working Group decided to adopt a new paragraph identical to article 9(4) to the effect that "A branch of a bank, even if located in the same State, is a separate bank for the purposes of this article." In support of adopting the new paragraph it was noted that a receiving bank might appropriately send its own payment order to another branch of the same bank. If the branches were not considered to be separate banks, the time limits in article 9 might be too short.

Article 7

142. Paragraphs (1), (2)(a) and (2)(b) were adopted with the changes made to article 5(1), (2)(a) and (2)(b). (See paragraphs 117, 123, 125 and 126, above.) Subparagraph (2)(c) was adopted without change.

143. It was suggested that, since subparagraphs (2)(d) to (2)(g) were all acts by which the beneficiary's bank placed the funds at the disposal of the beneficiary, such a formula might be used in subparagraph (2)(d) and the following subparagraphs might be deleted. It was stated that a danger of creating a list of means by which beneficiary's banks accepted payment orders was that some item might be left out that should have constituted an act of acceptance by the beneficiary's bank. Under another suggestion subparagraphs (2)(d) to (2)(g) might be integrated into article 8(4). In reply to the latter suggestion it was stated that article 7(2) provided for the occasions when the beneficiary's bank accepted a payment order while article 8(4) set out the obligations of a beneficiary's bank that had accepted the payment order.

144. A proposal was made to delete subparagraph (2)(e). It was said to serve a purpose only if the beneficiary's bank had not already credited the beneficiary's account, i.e. if the beneficiary had no account at the bank. In reply it was said that in precisely that situation, it was important that the beneficiary be notified that it had a right to withdraw the funds.

145. A proposal was made to add to subparagraph (2)(f) the words "or by the beneficiary". In opposition it was said that the originator might have designated transfer to a particular account of the beneficiary. It might not fulfil the underlying business arrangement between the originator and the beneficiary if the beneficiary was permitted to change the account to which the credit was to be made. If the beneficiary had the full right of disposition of the credit made to his account, which would be true in almost all cases, he would be able to transfer that amount by a new credit transfer.

146. It was suggested that the words "or applies it in conformity with an order of a court" in subparagraph (2)(g) should be deleted. It was said that it was unclear which courts might order the bank to apply the credit in some manner other than by credit to the account of the beneficiary, and especially whether the subparagraph referred to orders of foreign courts. In response it was said to be a provision that would do no harm and might help.

147. The Working Group decided to adopt subparagraphs (2)(d) to (2)(g) without change.

Article 8

Paragraphs (1) to (3)

148. It was noted that paragraphs (1) and (2) did not state the time within which the receiving bank had to give the required notice and that the reference in paragraph (3) was incorrect. It was also noted that in the current draft there was no provision in article 9 on when notices had to be given. Those matters were referred to the drafting group.

149. It was stated that the Model Law should indicate what obligations the sender of a payment order had when he received the notice given by the receiving bank under paragraph (1), (2) or (3). In reply it was stated that any obligation of the sender would arise as a result of its also being a receiving bank that would have to give notice to its sender when the problem of which it had been notified was also in the payment order it had received. When the problem arose out of its own error, it should have an obligation under article 11 to aid the completion of the credit transfer by correcting its own payment order. After discussion the Working Group decided that no change should be made to the text.

150. Paragraphs (1) and (2) were adopted by the Working Group with the changes to be made to make them conform to the equivalent paragraphs in article 6. Paragraph (3) was adopted without change, except for the correction of the cross-reference.

Paragraph (4)

151. The Working Group discussed whether it should adopt the approach taken by Variant A or by Variant B. In favour of Variant A it was said that it more closely conformed to the general policy decisions taken by the Working Group that the Model Law should set forth the rights and obligations of the parties up to the moment when the beneficiary's bank accepted the payment order but that the Model Law should not enter into the relationship between the beneficiary and the beneficiary's bank. That policy was based on the consideration that the rights of the originator and of the various banks in the credit transfer chain through the bank that issued the payment order to

the beneficiary's bank were adequately protected by the Model Law. Those were the only issues that needed to be treated by an international effort for the unification of law on a global scale. Since the law governing the account relationship between the beneficiary and the beneficiary's bank differed significantly from country to country, it would be particularly difficult to reach agreement on a uniform text. If agreement were to be reached in the Working Group on the obligations of the beneficiary's bank to the beneficiary, those obligations would apply only in respect of international credit transfers and not of other credit transfers.

152. In favour of Variant B it was stated that the credit transfer came to an end only when the beneficiary had effective use of the funds. It was appropriate for the Model Law to state the rules that governed the transfer to that point. It was also stated that one of the events that had led to the preparation of the Model Law had been a widely known case in which an originator had suffered a serious loss because the law governing the account relationship between the beneficiary and the beneficiary's bank was different from the law applicable to the underlying contract. In reply it was noted that the issue in that case had been the point of time when the credit transfer discharged the underlying obligation. That was said to be a problem governed by article 14 and not by article 8(4).

153. After discussion the Working Group decided to adopt Variant A in principle and to consider whether it should be amended in any manner.

154. It was stated that article 8(4) should be in conformity with article 7(2), and especially subparagraphs (d) through (g). It was suggested that that could be most easily accomplished by incorporating those provisions into article 8(4). In reply it was stated that article 7 and 8 were directed to two different questions. Article 7 dealt with the acceptance of the payment order by the beneficiary's bank while article 8 dealt with the obligations of the beneficiary's bank. Moreover, it was said, incorporating those subparagraphs of article 7(2) into article 8(4) would be the equivalent of reintroducing Variant B, which had already been rejected by the Working Group.

155. Another suggestion was that article 8(4) should specify that if the beneficiary's bank had accepted the payment order passively, it would have to place the funds at the disposal of the beneficiary; only if the beneficiary's bank had accepted the payment order by one of the explicit acts set out in article 7(2)(d) to (g) would it be required to give notice to the beneficiary of the acceptance.

156. The question was raised whether a beneficiary's bank would have fulfilled its obligation "to place the funds at the disposal of the beneficiary" if it had accepted the payment order under article 7(2)(g) by applying the credit to a debt of the beneficiary owed to it or by applying the credit in conformity with an order of a court. A similar question that was raised was whether a bank that netted outgoing payments against incoming credits placed the funds at the disposal of the beneficiary. It was suggested that some other formula might be used in article 8(4) such as "to give the beneficiary the benefit of the credit", or "to apply the funds in any way permitted by law".

157. The Working Group was agreed that the current formula was intended to cover the situation where the bank had netted obligations or had taken one of the actions described in article 7(2)(g). If under the circumstances the bank was found not to have acted properly when it applied the credit, that problem would be resolved under the otherwise applicable legal rules, but the payment order would, nevertheless, have been accepted under article 7(2)(g).

158. The Working Group discussed whether it was appropriate to refer to the applicable law governing the relationship between the bank and the beneficiary. The question was raised whether there might be a difference in the applicable law when the beneficiary had a contractual relationship with the beneficiary's bank and when it did not. A suggestion was made that reference should also be made to the agreement between the beneficiary and the beneficiary's bank.

159. After discussion the Working Group decided that it would not amend Variant A.

Beneficiary's right to reject credit transfer

160. A proposal was made that the Model Law should provide that the beneficiary would have a right to reject a credit transfer made to his account. It was stated that it was only logical that if the beneficiary's bank had a right to reject the payment order, the beneficiary should have a similar right. It was noted that if the beneficiary had a right to reject a credit transfer, it would normally be necessary that the return of the funds to the originator would be accomplished by a new credit transfer. It was noted that a similar situation existed when a beneficiary's bank rejected a payment order for any reason other than non-receipt of funds, since a new credit transfer was necessary to return the funds in that case as well. It was said that the discussion of the beneficiary's legal right to reject the credit transfer was a separate issue from the question as to how the funds would be returned, or at whose expense. It was also noted that, if a beneficiary exercised a right to reject a credit transfer, a convenient method of dealing with the funds without raising the problems of returning them would be to substitute the originator for the beneficiary with respect to the rights to the deposit that the beneficiary had rejected.

161. It was agreed that the right of the beneficiary to reject a credit transfer was related to the general issue of the completion of the credit transfer. It was pointed out that when the Working Group had adopted the definition of "credit transfer", it had placed the third sentence in square brackets as an indication that the substance of a rule as to when a credit transfer was completed was not being decided at that time. In that respect it was said that the right of the beneficiary to reject a credit transfer prior to its acceptance by the beneficiary's bank and his right to reject the credit transfer after acceptance by the beneficiary's bank should be distinguished.

162. It was stated that the Model Law might provide that the beneficiary had a right to reject the credit transfer if the transfer was for the purpose of discharging an obligation but the transfer did not conform to the authorized means of discharging that obligation. It was also stated that it was difficult to admit that the beneficiary could reject a credit transfer if the originator was authorized to pay the beneficiary in that manner. The reason the beneficiary wished to reject the transfer might be that he did not wish to have credit with the beneficiary's bank, perhaps because of questions that had arisen in respect of the solvency of the bank or because of the expectation of the imposition of exchange controls in the country where the bank was located that would make it difficult for the beneficiary to use the funds.

163. It was pointed out that in some countries foreign remittances had to be converted in whole or in part into the local currency, which might not be freely convertible. In such a case it would be difficult to admit that the beneficiary would have a right to reject the credit transfer.

164. After discussion the Working Group decided that in principle the Model Law should provide that the beneficiary would have a right to reject the credit transfer. One of the participants was requested to prepare a draft provision for consideration by the Working Group at its next session, and to deal with the time within which the beneficiary would be permitted to act and the costs of any credit transfer returning the funds.

Notice to beneficiary of credit

165. It was proposed that the Model Law should provide that the beneficiary's bank was required to give the beneficiary notice of the credit. In response to the statement that the Working Group had decided not to enter into the relationship between the beneficiary and the beneficiary's bank, it was said that the duty of notification was owed to the sender and not to the beneficiary. Therefore, it would be within the proper scope of the Model Law to set forth that duty. Moreover, it was said, the originator had an interest that the beneficiary know that the credit had been received. Furthermore, since it had been decided that the beneficiary should have a right to reject the credit transfer, it was necessary that he be notified of the credit.

166. After discussion it was decided that any duty to notify a beneficiary who had an account with the beneficiary's bank could be left to their agreement or to the law applicable to the account relationship. It was also decided that the Model Law should provide that the beneficiary's bank would have to give notice to a beneficiary who did not maintain an account at the bank that it was holding funds for his benefit, provided that the bank had sufficient information to give such notice.

Obligation to make funds available on pay date

167. The Working Group considered, but did not decide, the issue of whether the beneficiary's bank should have a duty either to its sender or to the originator to make funds available on a pay date specified on the payment order.

Article 9

168. The question was raised whether it would be useful to have a specific rule in the Model Law that a sender would retain the right to revoke the payment order until the execution date when the receiving bank had accepted the order prior to the execution date. It was said that such a rule would have its most important effects in cases of insolvency.

169. The Working Group decided to keep the issue in mind in its consideration of articles 10 and 12.

170. The Working Group decided that the substance of the prior article 7(2), i.e. that a bank that received a payment order late complied with its obligations if it executed the order on the day received, was currently covered in the chapeau of article 9 where it was stated that a receiving bank was required to execute the payment order on the day it was received.

171. The Working Group referred to the drafting group the various drafting suggestions contained in A/CN.9/WG.IV/WP.44, comments 15 to 19 to article 9.

172. The Working Group adopted the proposal that notices required to be given by articles 6 and 8, should be given on the day the payment order was received. It was noted that such a rule might not be appropriate for the notice to be given to a beneficiary who did not maintain an account at the beneficiary's bank that the bank was holding funds for his benefit (see paragraphs 165 and 166, above). The drafting group was requested to consider how the safeguards in article 9(2) and (3) were to be dealt with.

173. It was noted that during the discussion of conditional payment orders it had been decided that the Working Group would have to consider the time available to the receiving bank to accept or reject the order before the bank would be considered to have accepted the order under article 5(2)(a) or 7(2)(a). One suggestion was that the bank be given a "reasonable" time. Another suggestion was that the receiving bank never be deemed to have accepted the payment order under those two subparagraphs; it would have obligations under the Model Law only if it accepted the payment order by one of the other means specified in those articles. Yet another suggestion was that the receiving bank should have no obligation to accept or reject the payment order until it knew that the condition had been fulfilled. It was suggested that the proper result would be reached by interpretation of the term "execution date".

174. After discussion the Working Group decided to defer the question to its next session.

175. The Working Group decided that articles 5(2)(a) and 7(2)(a) should provide that there should not be acceptance under those subparagraphs until the receiving bank had received payment from the sender in accordance with article 4(4). It referred to the drafting group the task of making the appropriate amendments. In explanation it was said that that rule would require the receiving bank to act once it had received funds, even though those funds had arrived late. It would also protect the receiving bank when the payment order contained a value date since the sender knew that the receiving bank would not have funds before that date. (For the earlier decision that acceptance would not take place under those subparagraphs if the reason for the failure to execute the payment order had been insufficient funds, see paragraphs 123 and 142, above.)

176. A proposal was made to relax the rule in the chapeau of paragraph (1), i.e. that a receiving bank was required to execute the payment order on the day it was received, to permit execution on the following day. In support of the proposal it was said that a same-day rule was excessively strict for those occasions when the bank might receive an unusual number of payment orders. It was also said to be too strict for those countries whose banking systems were not sufficiently efficient to meet such strict requirements.

177. In opposition to the proposal it was said that the majority of international credit transfers were transmitted computer-to-computer and that same day execution should be the expected norm. It was also pointed out that paragraph (2) anticipated that banks would set cut-off times during the day for different types of payment orders, and that a payment order received after the cut-off time would be considered as having been received the following day. Since some banks set cut-off times as early as eight or nine in the morning for same-day processing of payment orders, the same-day rule in fact permitted banks to take up to two days.

178. There was some discussion as to whether the cut-off time was established unilaterally by the receiving bank or whether it was a system rule. It was pointed out that paragraph (2) provided that the cut-off time was established by the receiving bank. However, the bank might establish its cut-off time for certain types of payment orders by virtue of a system rule as to when the system would accept the orders. It was suggested that the concept of a cut-off time be clarified to emphasize that it might be fixed entirely at the discretion of the individual bank.

179. It was suggested that the term "day" should be defined to mean "working day". Another suggestion was that the period of time should be made more precise by specifying it in hours and not in days. It was also suggested that different periods of time might be appropriate for different types of payment orders, with a longer period of time for paper-based payment orders than for computer-to-computer payment orders.

180. It was suggested that the sender and the receiving bank should be able to derogate from the provisions of paragraph (1) by agreement. The possibility of derogation would establish the same-day rule as the general norm but would provide the necessary flexibility. In opposition it was stated that such a possibility would make it impossible for originator's banks to predict how long it would take for international credit transfers to take when they had to go through several intermediary banks.

181. After discussion the Working Group decided to adopt the chapeau of paragraph (1) without change.

182. In the context of subparagraph (1)(a) it was stated that the definition of "execution date" needed to be re-considered. Similarly, the definition of "pay date" and subparagraph (1)(b) needed to conform. Various drafting suggestions were referred to the drafting group.

183. Paragraphs (2), (3) and (4) were adopted.

Article 10

184. A proposal was made to replace the text of article 10 by the following:

"Article 10. Payment orders not revokable

(1) A payment order may not be revoked or amended by the sender once it has been received by the receiving bank.

(2) Notwithstanding paragraph (1) a sender may request the assistance of its receiving bank to amend or revoke a payment order and

(a) the receiving bank (other than the beneficiary's bank) may, if it wishes, co-operate with the request of its sender regardless of whether or not it has previously accepted the payment order, except that any request by the receiving bank to amend or revoke its own payment order is subject to this paragraph;

(b) the beneficiary's bank may, if it wishes, co-operate with the request of its sender, provided that it has not accepted the payment order."

185. In support of the proposal it was stated that the current text of article 10 was too intrusive and too complicated. There was no effective way to simplify its procedures by amendment of the current text, since the amendments would make the text itself more complicated. The proposed text was much simpler and it relieved receiving banks of the possibility that they would be liable to the originator or the sender if they failed to act upon the revocation order properly or that they might be liable to the beneficiary for interfering with any rights he might have under a theory of acquired rights. The sponsor of the proposal acknowledged that the proposal might not be complete in that it did not consider the question of the revocation of a payment order prior to a future execution date stipulated in the payment order. However, the proposal had been submitted with a view to offering an alternative approach for consideration at the next session of the Working Group.

186. The Working Group took note of the proposal and decided to examine it at its next session together with the proposal addressing the same issue that had originally been submitted to the nineteenth session, and which was reproduced in A/CN.9/WG.IV/WP.44, comment 16 to article 10.

Article 12

187. At the commencement of the session a small group consisting of the delegates of France, the United Kingdom and the United States and the observer from Finland had been asked to consider the liability provisions in general and to attempt to formulate an agreed position that might be considered by the Working Group. The group reported that they had been unable to reach an agreed position. In order to facilitate the work of the Working Group they had identified four major issues and they submitted their separate views for the consideration of the Working Group. The views of France, the United Kingdom and the United States were phrased in the form of answers to the questions they had posed. The views of Finland were phrased in the form of a new draft of a portion of article 11 and a re-drafting of article 12. While the four delegations submitted their views in writing to the Bureau and the Secretariat, they were presented orally to the Working Group.

188. The questions posed by the four delegations and a shortened form of their responses are as follows:

1. Should the "interest" provided for in article 12(5)(a) be at a specified rate?

France, the United Kingdom and the United States answered no. The draft text of Finland offered two possible rules for determining the rate, including the rate as established by the law applicable to the obligations of the receiving bank that caused the delay or the interbank lending rate at that place.

2. Should a "loss caused by a change in exchange rates" (article 12(5)(b)) be included as an ingredient of damages?

France and the United States answered no. France explained that the loss could arise only if the money of the transfer was not that of the place of the beneficiary. In that case the beneficiary would have accepted the risk of changes in exchange rates. Furthermore, if exchange losses were to be considered, exchange gains during the delay should also be considered.

Finland and the United Kingdom answered yes. The draft text submitted by Finland provided for liability when the credit transfer was in a currency other than the currency of the place where the beneficiary's bank was located.

3. Should "any other loss that may have occurred as a result" (article 12(5)(d)) be included as an ingredient of damages?

Finland answered yes, if the loss was due to non-completion or late completion of a credit transfer that was caused by a person employed or otherwise engaged by the receiving bank in the course of his duties relating to the execution of payment orders for the receiving bank and with the intent to cause loss or with gross disregard as to the risk of loss.

France answered yes, if the losses were foreseeable.

The United Kingdom answered that it was broadly content with the current provision but it offered a revision of the text.

The United States answered no.

4. To whom, and by whom, should damages be paid?

The answers were too complex to summarize. In general, the responsibility was thought to be that of the bank where the loss occurred. Finland, France, the United Kingdom and the United States said they believed the beneficiary should have a direct right to recover interest for delay. Finland proposed that the beneficiary should be entitled to claim the interest either from the bank that caused the delay or from the beneficiary's bank, which would have a right of recourse backward in the credit transfer chain.

Article 14

189. The Working Group engaged in a short general discussion of article 14 so as to lay a foundation for a more thorough discussion at the next session of the Working Group.

190. Although there was some support for the retention of paragraph (1), the general view was that it was not acceptable. It attempted to state a rule that might be generally followed in practice, but that violated deeply held feelings about the appropriate legal rules on the subject.

191. There was more general support for the inclusion in the Model Law of some rule that would have the effect of determining when an underlying obligation would be discharged. There was general agreement that paragraph (2) as currently drafted was unacceptable. Some support was expressed for the alternative proposals set out in A/CN.9/WG.IV/WP.44, comments 7 and 8. The view was also expressed that the proposal in comment 7 would be unacceptable as a matter of legislative policy because of the very fact that it set out a rule for the discharge of obligations.

192. The Secretary requested delegations to propose alternative texts for an article 14 that would fulfill the needs of the Model Law for a rule on the effect of a completed credit transfer without raising the kinds of concerns

that delegates had expressed in rejecting the current draft. Suggestions should be sent to the Secretary by the beginning of March, 1990 for inclusion in the working paper for the next session.

Drafting group

193. A drafting group was created to review the text of the articles considered by the Working Group at the current session. The drafting group was asked to consider the drafting proposals that had been made during the course of the session of the Working Group, to align the presentation of the various provisions for consistency and to assure concordance of the different language versions.

194. Articles 1 to 9 of the text of the draft Model Law set out in the annex to this report are as revised by the drafting group. Articles 10 to 15 were not revised and are as set out in the report of the nineteenth session of the Working Group, A/CN.9/328, annex. The only reservation that was expressed to the proposed draft concerned the criteria of internationality. The Working Group noted that the drafting group appeared not to have correctly implemented the idea expressed in paragraph 23, above.

Statement by the delegation of the United States

195. At the close of the session the delegation of the United States stated that it had great concern for the direction the Model Law project had taken and for the product it seemed destined to produce. When the effort began there was the potential to produce a single law that, across the world, would govern high speed electronic funds transfers. The United States had completed the preparation of its own version of such a statute, Article 4A of the Uniform Commercial Code. The differences between the two laws made it virtually inconceivable that the United States would adopt both.

196. The delegation said that it thought that Article 4A was a better law than the current Model Law. It was written with a greater appreciation of commercial reality. It relied upon the advice and guidance of those intimately involved with the workings of electronic funds transfers more than did these deliberations. It was less wedded than was the UNCITRAL Model Law to the traditions of the past.

197. The delegation suggested that one possibility was to separate the Model Law into two parts - one applicable to modern, high-speed electronic systems and another applicable to slower systems that were paper-related and more consistent with legal traditions of the past.

198. In response, it was stated that the Model Law project endeavoured to integrate the experience and objectives of all participating States to establish minimum standards that would assist in the development of international credit transfers and to reduce obstacles to international trade. It was noted that the law of many participating States had contained provisions dealing with credit transfers for many years and that considerable experience and jurisprudence existed with respect to them. In contrast, Article 4A was new and, as yet, untested. But the major role of United States' payment systems was also recognized. The hope was expressed that all States would continue to participate in the Model Law project not with a view to enshrining national law concepts, but with a view to reflecting them constructively in a useful new regime.

II. FUTURE SESSIONS

199. The Working Group noted that the twenty-first session would be held in New York from 9 to 20 July 1990 and that the twenty-second session, if it was necessary, would be held in Vienna from 26 November to 7 December 1990.

ANNEX

Draft Model Law on International Credit Transfers
resulting from the twentieth session of the
Working Group on International Payments a/

CHAPTER I. GENERAL PROVISIONS

Article 1. Sphere of application *

(1) This law applies to credit transfers where the originator's bank and the beneficiary's bank are in different States or, if the originator is a bank, that bank and the beneficiary's bank are in different States.

(2) For the purpose of determining the sphere of application of this Law, branches of a bank in different States are considered to be separate banks.

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* This Model Law is subject to any legislation dealing with the rights and obligations of consumers.

Article 2. Definitions

For the purposes of this law:

(a) "Credit transfer" means the series of operations, beginning with the originator's payment order, made for the purpose of placing funds at the disposal of a designated person. The term includes any payment order issued by the originator's bank or any intermediary bank intended to carry out the originator's payment order. [A credit transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.]

(b) "Payment order" means an instruction by a sender to a receiving bank to place at the disposal of a designated person a fixed or determinable amount of money if:

(i) the instruction contains no conditions other than conditions imposed by the originator that are to be satisfied on or before the issue of a payment order by the originator's bank,

(ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender,

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a/ At the twentieth session the Working Group considered and the drafting group revised articles 1 to 9. Articles 10 to 15 are presented as they were in A/CN.9/328, Annex.

(iii) the instruction is to be transmitted either directly to the receiving bank, or to an intermediary, a funds transfer system, or a communication system for transmittal to the receiving bank, and

(iv) the instruction is not intended to establish a letter of credit.

(c) "Originator" means the issuer of the first payment order in a credit transfer.

(d) "Beneficiary" means the person designated in the originator's payment order to receive funds as a result of the credit transfer.

(e) "Sender" means the person who issues a payment order, including the originator and any sending bank.

(f) "Bank" means an entity which, as an ordinary part of its business, engages in executing payment orders [and moving funds to other persons].

(g) A "receiving bank" is a bank that receives a payment order.

(h) "Intermediary bank" means any receiving bank other than the originator's bank and the beneficiary's bank.

(i) "Funds" or "money" includes credit in an account kept by a bank and includes credit denominated in a monetary unit of account that is established by an intergovernmental institution or by agreement of two or more States, provided that this Law shall apply without prejudice to the rules of the intergovernmental institution or the stipulations of the agreement.

(j) "Authentication" means a procedure established by agreement to determine whether all or part of a payment order [or a revocation of a payment order] was issued by the purported sender.

(k) "Execution date" means the date when the receiving bank is to execute the payment order in accordance with article 9.

(l) "Pay date" means the date specified by the originator when funds are to be placed at the disposal of the beneficiary.

Article 3. Deleted

CHAPTER II. DUTIES OF THE PARTIES

Article 4. Obligations of sender

(1) A purported sender is bound by a payment order [or a revocation of a payment order] if it was issued by him or by another person who had the authority to bind the purported sender.

(2) Notwithstanding anything to the contrary in paragraph (1) of this article, when a payment order is subject to authentication, a purported sender of such an order is bound if:

(a) the authentication provided is a commercially reasonable method of security against unauthorized payment orders,

(b) the amount of the order is covered by a withdrawable credit balance or authorized overdraft in an appropriate account of the sender with the receiving bank or there is an agreement between the sender and the receiving bank that such payment orders may be executed despite the absence of such balances or overdrafts, and

(c) the receiving bank complied with the authentication.

(3) Variant A

A purported sender [that is not a bank] is, however, not bound by a payment order under paragraph (2) of this article if

(a) the actual sender was a person other than a present or former employee of the purported sender, and

(b) the actual sender had gained access to the authentication procedure without fault on the part of the purported sender.

Variant B

No sender may become bound under paragraph (2) of this article if the sender proves that the payment order was executed by

(a) a present or former employee or agent of the receiving bank, or

(b) a person acting in concert with a person described in subparagraph (a), or

(c) any other person who, without the sender's authorization, obtained confidential information about the authentication from a source controlled by the receiving bank, regardless of fault.

(4) A sender becomes obligated to pay the receiving bank for the payment order when the receiving bank accepts it, but payment is not due until the execution date, unless otherwise agreed.

Article 5. Acceptance or rejection of a payment order by receiving bank that is not the beneficiary's bank

(1) The provisions of this article apply to a receiving bank that is not the beneficiary's bank.

(2) A receiving bank accepts the sender's payment order at the earliest of the following times:

(a) when the time within which a required notice of rejection should have been given has elapsed without notice having been given, provided that acceptance shall not occur until the receiving bank has received payment from the sender in accordance with article 4(4),

(b) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders from the sender upon receipt,

(c) when it gives notice to the sender of acceptance, or

(d) when it issues a payment order intended to carry out the payment order received.

(3) A receiving bank that does not accept a sender's payment order, otherwise than by virtue of subparagraph (2)(a), is required to give notice to that sender of the rejection, unless there is insufficient information to identify the sender. A notice of rejection of a payment order must be given not later than on the execution date.

Article 6. Obligations of receiving bank that is not the beneficiary's bank

(1) The provisions of this article apply to a receiving bank that is not the beneficiary's bank.

(2) A receiving bank that accepts a payment order is obligated under that payment order to issue a payment order, within the time required by article 9, either to the beneficiary's bank or to an appropriate intermediary bank, that is consistent with the contents of the payment order received by the receiving bank and that contains the instructions necessary to implement the credit transfer in an appropriate manner.

(3) When a payment order is received that contains information which indicates that it has been misdirected and which contains sufficient information to identify the sender, the receiving bank shall give notice to the sender of the misdirection, within the time required by article 9.

(4) When an instruction does not contain sufficient data to be a payment order, or being a payment order it cannot be executed because of insufficient data, but the sender can be identified, the receiving bank shall give notice to the sender of the insufficiency, within the time required by article 9.

(5) If there is an inconsistency in a payment order between the words and figures that describe the amount of money, the receiving bank shall, within the time required by article 9, give notice to the sender of the inconsistency, if the sender can be identified. This paragraph does not apply if the sender and the bank have agreed that the bank would rely upon either the words or the figures, as the case may be.

(6) The receiving bank is not bound to follow an instruction of the sender specifying an intermediary bank, funds transfer system or means of transmission to be used in carrying out the credit transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would cause excessive costs or delay in completion of the credit transfer. The receiving bank acts within the time required by article 9 if, in the time required by that article, it enquires of the sender as to the further actions it should take in light of the circumstances.

(7) For the purposes of this article, branches of a bank, even if located in the same State, are separate banks.

Article 7. Acceptance or rejection by beneficiary's bank

(1) The beneficiary's bank accepts a payment order at the earliest of the following times:

(a) when the time within which a required notice of rejection should have been given has elapsed without notice having been given, provided that acceptance shall not occur until the receiving bank has received payment from the sender in accordance with article 4(4),

(b) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders from the sender upon receipt,

(c) when it notifies the sender of acceptance,

(d) when the bank credits the beneficiary's account or otherwise places the funds at the disposal of the beneficiary,

(e) when the bank gives notice to the beneficiary that it has the right to withdraw the funds or use the credit,

(f) when the bank otherwise applies the credit as instructed in the payment order,

(g) when the bank applies the credit to a debt of the beneficiary owed to it or applies it in conformity with an order of a court.

(2) A beneficiary's bank that does not accept a sender's payment order, otherwise than by virtue of subparagraph (1)(a), is required to give notice to the sender of the rejection, unless there is insufficient information to identify the sender. A notice of rejection of a payment order must be given not later than on the execution date.

Article 8. Obligations of beneficiary's bank

(1) The beneficiary's bank is, upon acceptance of a payment order received, obligated to place the funds at the disposal of the beneficiary in accordance with the payment order and the applicable law governing the relationship between the bank and the beneficiary.

(2) When a payment order is received that contains information which indicates that it has been misdirected and which contains sufficient information to identify the sender, the beneficiary's bank shall give notice to the sender of the misdirection, within the time required by article 9.

(3) When an instruction does not contain sufficient data to be a payment order, or being a payment order it cannot be executed because of insufficient data, but the sender can be identified, the beneficiary's bank shall give notice to the sender of the insufficiency, within the time required by article 9.

(4) If there is an inconsistency in a payment order between the words and figures that describe the amount of money, the beneficiary's bank shall, within the time required by article 9, give notice to the sender of the inconsistency, if the sender can be identified. This paragraph does not apply if the sender and the bank have agreed that the bank would rely upon either the words or the figures, as the case may be.

(5) Where the beneficiary is described by both words and figures, and the intended beneficiary is not identifiable with reasonable certainty, the beneficiary's bank shall give notice, within the time required by article 9, to its sender and to the originator's bank, if they can be identified.

(6) The beneficiary's bank shall on the execution date give notice to a beneficiary who does not maintain an account at the bank that it is holding funds for his benefit, if the bank has sufficient information to give such notice.

Article 9. Time for receiving bank to execute payment order and give notices

(1) A receiving bank is required to execute the payment order on the day it is received, unless

(a) a later date is specified in the order, in which case the order shall be executed on that date, or

(b) the order specifies a pay date and that date indicates that later execution is appropriate in order for the beneficiary's bank to accept a payment order and place the funds at the disposal of the beneficiary on the pay date.

(2) A notice required to be given under article 6(3), (4) or (5) or article 8(2), (3), (4) or (5) shall be given on the day the payment order is received.

(3) A receiving bank that receives a payment order after the receiving bank's cut-off time for that type of payment order is entitled to treat the order as having been received on the following day the bank executes that type of payment order.

(4) If a receiving bank is required to take an action on a day when it is not open for the execution of payment orders of the type in question, it must take the required action on the following day it executes that type of payment order.

(5) For the purposes of this article, branches of a bank, even if located in the same State, are separate banks.

Article 10. Revocation

(1) A revocation order issued to a receiving bank other than the beneficiary's bank is effective if:

(a) it was issued by the sender of the payment order,

(b) it was received in sufficient time before the execution of the payment order to enable the receiving bank, if it acts as promptly as possible under the circumstances, to cancel the execution of the payment order, and

(c) it was authenticated in the same manner as the payment order.

(2) A revocation order issued to the beneficiary's bank is effective if:

(a) it was issued by the sender of the payment order,

(b) it was received in sufficient time before acceptance of the payment order to enable the beneficiary's bank, if it acts as promptly as possible under the circumstances, to refrain from accepting the payment order, and

(c) it was authenticated in the same manner as the payment order.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the sender and the receiving bank may agree that payment orders issued by the sender to the receiving bank are to be irrevocable or that a revocation order is effective only if it is received by an earlier point of time than provided in paragraphs (1) and (2).

(4) If a revocation order is received by the receiving bank too late to be effective under paragraph (1), the receiving bank shall, as promptly as possible under the circumstances, revoke the payment order it has issued to its receiving bank, unless that payment order is irrevocable under an agreement referred to in paragraph (3).

(5) A sender who has issued an order for the revocation of a payment order that is not irrevocable under an agreement referred to in paragraph (3) is not obligated to pay the receiving bank for the payment order:

(a) if, as a result of the revocation, the credit transfer is not completed, or

(b) if, in spite of the revocation, the credit transfer has been completed due to a failure of the receiving bank or a subsequent receiving bank to comply with its obligations under paragraphs (1), (2) or (4).

(6) If a sender who, under paragraph (5), is not obligated to pay the receiving bank has already paid the receiving bank for the revoked payment order, the sender is entitled to recover the funds paid.

(7) If the originator is not obligated to pay for the payment order under paragraph (5)(b) or has received a refund under paragraphs (5)(b) or (6), any right of the originator to recover funds from the beneficiary is assigned to the bank that failed to comply with its obligations under paragraphs (1), (2) or (4).

(8) The death, bankruptcy, or incapacity of either the sender or the originator does not affect the continuing legal validity of a payment order that was issued before that event.

(9) A branch of a bank, even if located in the same country, is a separate bank for the purposes of this article.

CHAPTER III. CONSEQUENCES OF FAILED, ERRONEOUS OR DELAYED CREDIT TRANSFERS

Article 11. [Assistance and refund]

A receiving bank other than the beneficiary's bank that accepts a payment order is obligated under that order:

(a) where a payment order is issued to a beneficiary's bank in an amount less than the amount in the payment order issued by the originator to the originator's bank - to assist the originator and each subsequent sending bank, and to seek the assistance of its receiving bank, to obtain the issuance of a payment order to the beneficiary's bank for the difference between the amount paid to the beneficiary's bank and the amount stated in the payment order issued by the originator to the originator's bank.

(b) where a payment order consistent with the contents of the payment order issued by the originator and containing instructions necessary to implement the credit transfer in an appropriate manner is not issued to or accepted by the beneficiary's bank - to refund to its sender any funds received from its sender, and the receiving bank is entitled to the return of any funds it has paid to its receiving bank.

Article 12. Liability and damages

[(1) A receiving bank that fails in its obligations under article 5 is liable therefor to its sender and to the originator.]

(2) The originator's bank and each intermediary bank that accepts a payment order is liable to its sender and to the originator for the losses as set out in paragraph (5) of this article caused by the non-execution or the improper execution of the credit transfer as instructed in the originator's payment order. The credit transfer is properly executed if a payment order consistent with the payment order issued by the originator is accepted by the beneficiary's bank within the time required by article 9.

(3) An intermediary bank is not liable under paragraph (2) if the payment order received by the beneficiary's bank was consistent with the payment order received by the intermediary bank and it executed the payment order received by it within the time required by article 9.

(4) The beneficiary's bank is liable

(a) to the beneficiary for its improper execution or its failure to execute a payment order it has accepted to the extent provided by the law governing the [account relationship] [relationship between the beneficiary and the bank], and

(b) to its sender and to the originator for any losses caused by the bank's failure to place the funds at the disposal of the beneficiary in accordance with the terms of a pay date or execution date stated in the order, as provided in article 9.

(5) If a bank is liable under this article to the originator or to its sender, it is obliged to compensate for

(a) loss of interest,

(b) loss caused by a change in exchange rates,

(c) expenses incurred for a new payment order [and for reasonable costs of legal representation],*

(d) [any other loss] that may have occurred as a result, if the improper [or late] execution or failure to execute [resulted from an act or omission of the bank done with the intent to cause such improper [or late] execution or failure to execute, or recklessly and with knowledge that such improper [or late] execution or failure to execute would probably result].

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* Consideration may be given to allowing recovery of reasonable costs of legal representation even if they are not recoverable under the law of civil procedure.

(6) If a receiving bank fails to notify the sender of a misdirected payment order as provided in articles 6(2) or 8(1), and the credit transfer is delayed, the receiving bank shall be liable:

(a) if there are funds available, for interest on the funds that are available for the time they are available to the receiving bank, or

(b) if there are no funds available, for interest on the amount of the payment order for an appropriate period of time, not to exceed 30 days.

(7) Banks may vary the provisions of this article by agreement to the extent that it increases or reduces the liability of the receiving bank to another bank and to the extent that the act or omission would not be described by paragraph (5)(d). A bank may agree to increase its liability to an originator that is not a bank but may not reduce its liability to such an originator.

(8) The remedies provided in this article do not depend upon the existence of a pre-existing relationship between the parties, whether contractual or otherwise. These remedies shall be exclusive and no other remedy arising out of other doctrines of law shall be available.

Article 13. Exemptions

A receiving bank and any bank to which the receiving bank is directly or indirectly liable under article 12 is exempt from liability for a failure to perform any of its obligations if the bank proves that the failure was due to the order of a court or to interruption of communication facilities or equipment failure, suspension of payments by another bank, war, emergency conditions or other circumstances that the bank could not reasonably be expected to have taken into account at the time of the credit transfer or if the bank proves that it could not reasonably have avoided the event or overcome it or its consequences.

CHAPTER IV. CIVIL CONSEQUENCES OF CREDIT TRANSFER

Article 14. Payment and discharge of monetary obligations; obligation of bank to account holder

(1) Unless otherwise agreed by the parties, payment of a monetary obligation may be made by a credit transfer to an account of the beneficiary in a bank.

(2) The obligation of the debtor is discharged and the beneficiary's bank is indebted to the beneficiary to the extent of the payment order received by the beneficiary's bank when the payment order is accepted by the beneficiary's bank.

(3) If one or more intermediary banks have deducted charges from the amount of the credit transfer, the obligation is discharged by the amount of those charges in addition to the amount of the payment order as received by the beneficiary's bank. Unless otherwise agreed, the debtor is bound to compensate the creditor for the amount of those charges.

(4) To the extent that a receiving bank has a right of reimbursement from a sender by debit to an account held by the receiving bank for the sender, the account shall be deemed to be debited when the receiving bank accepts the payment order.

CHAPTER V. CONFLICT OF LAWS

Article 15. Conflict of laws

(1) Persons who anticipate that they will send and receive payment orders may agree that the law of the State of the sender, of the receiver or of the State in whose currency the payment orders are denominated will govern their mutual rights and obligations arising out of the payment orders. In the absence of agreement, the law of the State of the receiving bank will govern the rights and obligations arising out of the payment order.

(2) In the absence of agreement to the contrary, the law of the State where an obligation is to be discharged governs the mutual rights and obligations of an originator and beneficiary of a credit transfer. If between the parties an obligation could be discharged by credit transfer to an account in any of one or more States or if the transfer was not for the purpose of discharging an obligation, the law of the State where the beneficiary's bank is located governs the mutual rights and obligations of the originator and the beneficiary.