

Convention Providing a Uniform Law for Cheques

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Annex I

Uniform law on cheques

Chapter I - The drawing and form of a cheque

Article 1

A cheque contains:

1. The term " cheque " inserted in the body of the instrument and expressed in the language employed in drawing up the instrument ;
2. An unconditional order to pay a determinate sum of money ;
3. The name of the person who is to pay (drawee) ;
4. A statement of the place where payment is to be made ;
5. A statement of the date when and the place where the cheque is drawn ;
6. The signature of the person who draws the cheque (drawer).

Article 2

An instrument in which any of the requirements mentioned in the preceding article is wanting is invalid as a cheque, except in the cases specified in the following paragraphs:

- In the absence of special mention, the place specified beside the name of the drawee is deemed to be the place of payment. If several places are named beside the name of the drawee, the cheque is payable at the first place named.
- In the absence of these statements, and of any other indication, the cheque is payable at the place where the drawee has his principal establishment.

A cheque which does not specify the place at which it was drawn is deemed to have been drawn in the place specified beside the name of the drawer.

Article 3

A cheque must be drawn on a banker holding funds at the disposal of the drawer and in conformity with an agreement, express or implied, whereby the drawer is entitled to dispose of those funds by cheque. Nevertheless, if these provisions are not complied with, the instrument is still valid as a cheque.

Article 4

A cheque cannot be accepted. A statement of acceptance on a cheque shall be disregarded.

Article 5

A cheque may be made payable:

- To a specified person with or without the express clause " to order ", or
- To a specified person, with the words " not to order " or equivalent words, or
- To bearer.

A cheque made payable to a specified person with the words, " or to bearer ", or any equivalent words, is deemed to be a cheque to bearer.

A cheque which does not specify the payee is deemed to be a cheque to bearer.

Article 6

A cheque may be drawn to the drawer's own order.

A cheque may be drawn for account of a third person.

A cheque may not be drawn on the drawer himself unless it is drawn by one establishment on another establishment belonging to the same drawer.

Article 7

Any stipulation concerning interest which may be embodied in the cheque shall be disregarded.

Article 8

A cheque may be payable at the domicile of a third person either in the locality where the drawee has his domicile or in another locality, provided always that such third person is a banker.

Article 9

Where the sum payable by a cheque is expressed in words and also in figures, and there is any discrepancy, the sum denoted by the words is the amount payable.

Where the sum payable by a cheque is expressed more than once in words or more than once in figures, and there is any discrepancy, the smaller sum is the sum payable.

Article 10

If a cheque bears signatures of persons incapable of binding themselves by a cheque, or forged signatures, or signatures of fictitious persons, or signatures which for any other reason cannot bind the persons who signed the cheque or on whose behalf it was signed, the obligations of the other persons who have signed it are none the less valid.

Article 11

Whosoever puts his signature on a cheque as representing a person for whom he had no power to act is bound himself as a party to the cheque and, if he pays, has the same rights as the person for whom he purported to act. The same rule applies to a representative who has exceeded his powers.

Article 12

The drawer guarantees payment. Any stipulation by which the drawer releases himself from this guarantee shall be disregarded.

Article 13

If a cheque which was incomplete when issued has been completed otherwise than in accordance with the agreements entered into, the non-observance of such agreements may not be set up against the holder unless he has acquired the cheque in bad faith or, in acquiring it, has been guilty of gross negligence.

Chapter II - Negotiation

Article 14

A cheque made payable to a specified person, with or without the express clause " to order ", may be transferred by means of endorsement.

A cheque made payable to a specified person, in which the words " not to order " or any equivalent expression have been inserted, can only be transferred according to the form and with the effects of an ordinary assignment.

A cheque may be endorsed even to the drawer or to any other party to the cheque. These persons may re-endorse the cheque.

Article 15

An endorsement must be unconditional. Any condition to which it is made subject shall be disregarded.

A partial endorsement is null and void.

An endorsement by the drawee is also null and void.

An endorsement " to bearer " is equivalent to an endorsement in blank.

An endorsement to the drawee has the effect only of a receipt, except in the case where the drawee has several establishments and the endorsement is made in favour of an establishment other than that on which the cheque has been drawn.

Article 16

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

The endorsement may leave the beneficiary unspecified or may consist simply of the signature of the endorser (endorsement in blank). In the latter case, the endorsement, to be valid, must be written on the back of the cheque or on the slip attached thereto (allonge).

Article 17

An endorsement transfers all the rights arising out of a cheque. If the endorsement is in blank, the holder may :

1. Fill up the blank either with his own name or with the name of some other person ;
2. Re-endorse the cheque in blank or to some other person ;
3. Transfer the cheque to a third person without filling up the blank and without endorsing it.

Article 18

In the absence of any contrary stipulation, the endorser guarantees payment.

He may prohibit any further endorsement ; in this case he gives no guarantee to the persons to whom the cheque is subsequently endorsed.

Article 19

The possessor of an endorsable cheque is deemed to be the lawful holder if he establishes his title to the cheque through an uninterrupted series of endorsements, even if the last endorsement is in blank. In this connection, cancelled endorsements shall be disregarded. When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the cheque by the endorsement in blank.

Article 20

An endorsement on a cheque to bearer renders the endorser liable in accordance with the provisions governing the right of recourse; but it does not convert the instrument into a cheque to order.

Article 21

Where a person has, in any manner whatsoever, been dispossessed of a cheque (whether it is a cheque to bearer or an endorsable cheque to which the holder establishes his right in the manner mentioned in Article 19), the holder into whose possession the cheque has come is not bound to give up the cheque unless he has acquired it in bad faith or unless in acquiring it he has been guilty of gross negligence.

Article 22

Persons sued on a cheque cannot set up against the holder defences founded on their personal relations with the drawer or with previous holders, unless the holder in acquiring the cheque has knowingly acted to the detriment of the debtor.

Article 23

When an endorsement contains the statement " value in collection " (" valeur en recouvrement") for collection " (" pour encaissement "), " by procuration " (" par procuration"), or any other phrase implying a simple mandate, the holder may exercise all rights arising out of the cheque, but he can endorse it only in his capacity as agent. In this case the parties liable can only set up against the holder defences which could be set up against the endorser.

The mandate contained in an endorsement by procuration does not terminate by reason of the death of the party giving the mandate or by reason of his becoming legally incapable.

Article 24

An endorsement after protest or after an equivalent declaration or after the expiration of the limit of time for presentment operates only as an ordinary assignment.

Failing proof to the contrary, an undated endorsement is deemed to have been placed on the cheque prior to the protest or equivalent declaration or prior to the expiration of the limit of time referred to in the preceding paragraph.

Chapter III - Avals

Article 25

Payment of a cheque may be guaranteed by an " aval " as to the whole or part of its amount. This guarantee may be given by a third person other than the drawee, or even by a person who has signed the cheque.

Article 26

An " aval " is given either on the cheque itself or on an " allonge ".

It is expressed by the words " good as aval ", or by any other equivalent formula. It is signed by the giver of the " aval ".

It is deemed to be constituted by the mere signature of the giver of the " aval ", placed on the face of the cheque, except in the case of the signature of the drawer.

An " aval " must specify for whose account it is given. In default of this, it is deemed to be given for the drawer.

Article 27

The giver of an " aval " is bound in the same manner as the person for whom he has become guarantor.

His undertaking is valid even when the liability which he has guaranteed is inoperative for any reason other than defect of form.

He has, when he pays the cheque, the rights arising out of the cheque against the person guaranteed and against those who are liable to the latter on the cheque.

Chapter IV - Presentment and payment

Article 28

A cheque is payable at sight. Any contrary stipulation shall be disregarded.

A cheque presented for payment before the date stated as the date of issue is payable on the day of presentment.

Article 29

A cheque payable in the country in which it was issued must be presented for payment within eight days.

A cheque issued in a country other than that in which it is payable must be presented within a period of twenty days or of seventy days, according as to whether the place of issue and the place of payment are situated respectively in the same continent or in different continents.

For the purposes of this article cheques issued in a European country and payable in a country bordering on the Mediterranean or vice versa are regarded as issued and payable in the same continent.

The date from which the above-mentioned periods of time shall begin to run shall be the date stated on the cheque as the date of issue.

Article 30

Where a cheque is drawn in one place and is payable in another having a different calendar, the day of issue shall be construed as being the corresponding day of the calendar of the place of payment.

Article 31

Presentment of a cheque at a clearing-house is equivalent to presentment for payment.

Article 32

The countermand of a cheque only takes effect after the expiration of the limit of time for presentment.

If a cheque has not been countermanded, the drawee may pay it even after the expiration of the time-limit.

Article 33

Neither the death of the drawer nor his incapacity taking place after the issue of the cheque shall have any effect as regards the cheque.

Article 34

The drawee who pays a cheque may require that it shall be given up to him receipted by the holder.

The holder may not refuse partial payment.

In case of partial payment the drawee may require that the partial payment shall be mentioned on the cheque and that a receipt shall be given to him.

Article 35

The drawee who pays an endorsable cheque is bound to verify the regularity of the series of endorsements, but not the signature of the endorsers.

Article 36

When a cheque is drawn payable in a currency which is not that of the place of payment, the sum payable may, within the limit of time for the presentment of the cheque, be paid in the currency of the country according to its value on the date of payment. If payment has not been made on presentment, the holder may at his option demand that payment of the amount of the cheque in the currency of the country shall be made according to the rate on the day of presentment or on the day of payment.

The usages of the place of payment shall be applied in determining the value of foreign currency. Nevertheless, the drawer may stipulate that the sum payable shall be calculated according to a rate expressed in the cheque.

The foregoing rules shall not apply to the case in which the drawer has stipulated that payment must be made in a certain specified currency (stipulation for effective payment in a foreign currency).

If the amount of the cheque is specified in a currency having the same denomination but a different value in the country of issue and the country of payment, reference is deemed to be made to the currency of the place of payment.

Chapter V - Crossed cheques and cheques payable in account

Article 37

The drawer or holder of a cheque may cross it with the effects stated in the next article hereof.

A crossing takes the form of two parallel lines drawn on the face of the cheque. The crossing may be general or special.

The crossing is general if it consists of the two lines only or if between the lines the term " banker " or some equivalent is inserted ; it is special if the name of a banker is written between the lines.

A general crossing may be converted into a special crossing, but a special crossing may not be converted into a general crossing.

The obliteration either of a crossing or of the name of the banker shall be regarded as not having taken place.

Article 38

A cheque which is crossed generally can be paid by the drawee only to a banker or to a customer of the drawee.

A cheque which is crossed specially can be paid by the drawee only to the named banker, or if the latter is the drawee, to his customer. Nevertheless, the named banker may procure the cheque to be collected by another banker.

A banker may not acquire a crossed cheque except from one of his customers or from another banker. He may not collect it for the account of other persons than the foregoing.

A cheque bearing several special crossings may not be paid by the drawee except in a case where there are two crossings, one of which is for collection through a clearing-house.

The drawee or banker who fails to observe the above provisions is liable for resulting damage up to the amount of the cheque.

Article 39

The drawer or the holder of a cheque may forbid its payment in cash by writing transversally across the face of the cheque the words " payable in account " (" à porter en compte ") or a similar expression.

In such a case the cheque can only be settled by the drawee by means of book-entry (credit in account, transfer from one account to another, set off or clearing-house settlement). Settlement by book-entry is equivalent to payment.

Any obliteration of the words " payable in account " shall be deemed not to have taken place.

The drawee who does not observe the foregoing provisions is liable for resulting damage up to the amount of the cheque.

Chapter VI - Recourse for non-payment

Article 40

The holder may exercise his right of recourse against the endorsers, the drawer and the other parties liable if the cheque on presentment in due time is not paid, and if the refusal to pay is evidenced :

1. By a formal instrument (protest), or
2. By a declaration dated and written by the drawee on the cheque and specifying the day of presentment, or
3. By a dated declaration made by a clearing-house, stating that the cheque has been delivered in due time and has not been paid.

Article 41

The protest or equivalent declaration must be made before the expiration of the limit of time for presentment.

If the cheque is presented on the last day of the limit of time, the protest may be drawn up or the equivalent declaration made on the first business day following.

Article 42

The holder must give notice of non-payment to his endorser and to the drawer within the four business days which follow the day on which the protest is drawn up or the equivalent declaration is made or, in case of a stipulation (*retour sans frais*), the day of presentment. Every endorser must, within the two business days following the day on which he receives notice, inform his endorser of the notice which he has received, mentioning the names and addresses of those who have given the previous notices and so on through the series until the drawer is reached. The periods mentioned above run from the receipt of the preceding notice.

When, in conformity with the preceding paragraph, notice is given to a person who has signed a cheque, the same notice must be given within the same limit of time to his avaliseur.

Where an endorser either has not specified his address or has specified it in an illegible manner, it is sufficient if notice is given to the endorser preceding him.

The person who must give notice may give it in any form whatever, even by simply returning the cheque.

He must prove that he has given notice within the limit of time prescribed. This time-limit shall be regarded as having been observed if a letter giving the notice has been posted within the said time.

A person who does not give notice within the limit of time prescribed above does not forfeit his rights. He is liable for the damage, if any, caused by his negligence, but the amount of his liability shall not exceed the amount of the cheque.

Article 43

The drawer, an endorser, or an avaliseur may, by the stipulation " retour sans frais ", " sans protêt ", or any other equivalent expression written on the instrument and signed, release the holder from having a protest drawn up or an equivalent declaration made in order to exercise his right of recourse.

This stipulation does not release the holder from presenting the cheque within the prescribed limit of time, or from giving the requisite notices. The burden of proving the non-observance of the limit of time lies on the person who seeks to set it up against the holder.

If the stipulation is written by the drawer, it is operative in respect of all persons who have signed the cheque ; if it is written by an endorser or an avaliseur, it is operative only in respect of such endorser or avaliseur. If, in spite of the stipulation written by the drawer, the holder has the protest drawn up or the equivalent declaration made, he must bear the expenses thereof. When the stipulation emanates from an endorser or avaliseur, the costs of the protest or equivalent declaration, if drawn up or made, may be recovered from all the persons who have signed the cheque.

Article 44

All the persons liable on a cheque are jointly and severally bound to the holder.

The holder has the right to proceed against all these persons individually or collectively without being compelled to observe the order in which they have become bound.

The same right is possessed by any person signing the cheque who has taken it up and paid it.

Proceedings against one of the parties liable do not prevent proceedings against the others, even though such other parties may be subsequent to the party first proceeded against.

Article 45

The holder may claim from the party against whom he exercises his right of recourse:

1. The unpaid amount of the cheque;

2. Interest at the rate of 6 % as from the date of presentment;
3. The expenses of the protest or equivalent declaration, and of the notices given as well as other expenses.

Article 46

A party who takes up and pays a cheque can recover from the parties liable to him:

1. The entire sum which he has paid;
2. Interest on the said sum calculated at the rate of 6 %, as from the day on which he made payment;
3. Any expenses which he has incurred.

Article 47

Every party liable against whom a right of recourse is, or may be, exercised, can require against payment, that the cheque shall be given up to him with the protest or equivalent declaration and a receipted account.

Every endorser who has taken up and paid a cheque may cancel his own endorsement and those of subsequent endorsers.

Article 48

Should the presentment of the cheque or the drawing up of the protest or the making of the equivalent declaration within the prescribed limits of time be prevented by an insurmountable obstacle (legal prohibition (prescription legale) by any State or other case of vis major), these limits of time shall be extended.

The holder is bound to give notice without delay of the case of vis major to his endorser and to make a dated and signed declaration of this notice, on the cheque or on an allonge ; in other respects, the provisions of Article 42 shall apply.

When vis major has terminated, the holder must without delay present the cheque for payment and, if need be, procure a protest to be drawn up or an equivalent declaration made.

If vis major continues to operate beyond fifteen days after the date on which the holder, even before the expiration of the time-limit for presentment, has given notice of vis major to his endorser, recourse may be exercised and neither presentment nor a protest nor an equivalent declaration shall be necessary.

Facts which are purely personal to the holder or to the person whom he has entrusted with the presentment of the cheque or the drawing up of the protest or the making of the equivalent declaration are not deemed to constitute cases of vis major.

Chapter VII - Parts of a set

Article 49

With the exception of bearer cheques, any cheque issued in one country and payable in another or payable in a separate part overseas of the same country or vice versa, or issued and payable in the same or in different parts overseas of the same country, may be drawn in a set of identical parts. When a cheque is in a set of parts, each part must be numbered in the body of the instrument, failing which each part is deemed to be a separate cheque.

Article 50

Payment made on one part operates as a discharge, even though there is no stipulation that such payment shall render the other parts of no effect.

An endorser who has negotiated parts to different persons and also the endorsers subsequent to him are liable on all the parts bearing their signatures, which have not been given up.

Chapter VIII - Alterations

Article 51

In case of alteration of the text of a cheque, parties who have signed subsequent to the alteration are bound according to the terms of the altered text ; parties who have signed before the alteration are bound according to the terms of the original text.

Chapter IX - Limitation of actions

Article 52

Actions of recourse by the holder against the endorsers, the drawer and the other parties liable are barred after six months as from the expiration of the limit of time fixed for presentment.

Actions of recourse by the different parties liable for the payment of a cheque against other such parties are barred after six months as from the day on which the party liable has paid the cheque or the day on which he was sued thereon.

Article 53

Interruption of the period of limitation is only effective against the person in respect of whom the period has been interrupted.

Chapter X - General provisions

Article 54

In the present law the word " banker " includes the persons or institutions assimilated by the law to bankers.

Article 55

The presentment or protest of a cheque may only take place on a business day. When the last day of the limit of time prescribed by the law for performing any act relating to a cheque, and particularly for presentment or for the drawing up of a protest or the making of an equivalent declaration, is a legal holiday, the limit of time is extended until the first business day which follows the expiration of that time. Intermediate holidays are included in computing limits of time.

Article 56

The limits of time stipulated in the present law shall not include the day on which the period commences.

Article 57

No days of grace, whether legal or judicial, are permitted.