

preparing model legislation, it decided that it would be appropriate to include such a rule.

159. There was general agreement that the words in brackets in paragraph (1) as well as the entire text of paragraph (2) introduced complications that were unnecessary. Therefore, it was agreed to delete paragraph (2) and to restrict paragraph (1) to providing that an obligation could be discharged by means of a funds transfer.

Paragraph (3)

160. The Working Group was agreed that it would not decide at the current session whether it was appropriate to retain in the Model Rules a provision on discharge of the underlying obligation. However, in discussing paragraph (3), it reiterated its position that the rules on discharge, whether under the Model Rules or under national law, and the rules governing finality should be consistent. In that respect, it noted that the Model Rules had been drafted on the basis that those rules would be identical.

161. The Working Group took note of the fact that in some legal systems an underlying obligation was considered to be discharged when the originator gave the payment order with cover to the originator's bank. The discharge was conditional on the completion of the funds transfer. However, since the originator's bank already had cover, it was unlikely that the funds transfer would not be completed. In some other legal systems the same rule applied to certain restricted categories of funds transfers, such as for the payment of insurance premiums. Such a legal doctrine served to restrict the possibility that an insurance policy would lapse because of late payment of the premium.

162. The Working Group decided to consider at a future session what effect such national laws on discharge of the underlying obligation might have on the appropriate rules on finality of the funds transfer.

Paragraph (4)

163. It was suggested that the words "unless otherwise agreed" should be added to the second sentence of paragraph (4) since it was common for beneficiaries (creditors)

to agree to be responsible for such charges. When it was pointed out that under the second sentence of paragraph (4) the originator (debtor) would have to send a second payment order, which in turn might have charges deducted from it, it was suggested that the rule might be reversed by deleting the sentence.

Paragraph (5)

164. Concern was expressed as to whether paragraph (5) would work properly in the context of article 9(2). It was suggested that paragraph (5) should state that the debit would be deemed to have been made upon the issue of the payment order, but that if the payment order was revoked, the debit would be reversed.

Additional matters to be covered in the Model Rules

165. It was noted that in the document containing the draft Model Rules (A/CN.9/WG.IV/WP.37, paragraph 7), the secretariat had listed several subjects on which no provision had been included but on which provisions might be included in a future draft. Of those subjects, it was suggested that the secretariat attempt to prepare provision on the conflict of laws for the next session of the Working Group and that that might be done either by the secretariat alone or in conjunction with the Hague Conference on Private International Law. In reply the observer for the Hague Conference stated that the question of whether the subject of conflict of laws in electronic funds transfers should be placed on the programme of work had been considered by a Special Commission in January, and would be on the agenda of the sixteenth session of the Conference in October. At the meeting of the Special Commission it had been thought that it was not yet appropriate to undertake a study of the subject until the substantive rules to be applied were more clearly determined.

III. FUTURE SESSIONS

166. The Working Group noted that the eighteenth session would be held at Vienna from 5 to 16 December 1988 and that the nineteenth session would be held in New York from 10 to 21 July 1989.

B. Draft model rules on electronic funds transfers: report of the Secretary-General^a (A/CN.9/WG.IV/WP.37) [Original: English]

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^aWorking paper submitted to the Working Group on International Payments at its seventeenth session.

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INTRODUCTION

1. In conjunction with its decision at the nineteenth session in 1986 to authorize the Secretariat to publish the UNCITRAL Legal Guide on Electronic Funds Transfers as a product of the work of the Secretariat, the Commission decided to begin the preparation of Model Rules on electronic funds transfers and to entrust this task to the Working Group on International Payments.¹

2. The Working Group undertook this task at its sixteenth session held at Vienna from 2 to 13 November 1987. At that session the Working Group reviewed a number of legal issues set forth in a report prepared by the Secretariat (A/CN.9/WG.IV/WP.35). At the conclusion of the session the Working Group requested the Secretariat to prepare draft provisions based on the discussions during that session for its consideration at its next meeting (A/CN.9/297, para. 98).

3. This report contains the draft provisions requested by the Working Group together with a commentary.

4. The Commission made two fundamental decisions at its nineteenth session as to the general nature of the Model

Rules to be developed by the Working Group. Firstly, the Model Rules should be flexible and should be drafted in such a way that they did not depend upon specific technology. Secondly, the Model Rules should deal with both the relationship between banks, even though at the present time these relationships may be largely governed by inter-bank agreements, and the relationship between banks and their customers, even though both parties to that relationship would normally be from the same country (A/41/17, para. 231).

5. The Working Group at its sixteenth session decided that the Model Rules should not be drafted narrowly, covering only a few precise points that would be welcomed by the banking community, but that they should be drafted so as to cover a wide range of banking situations and legal problems. Although such rules would have less likelihood of being widely adopted, they would serve an educational role and thereby lead towards the harmonization of law in this field (A/CN.9/297, para. 12).

6. These basic decisions of the Commission and the Working Group have been carried out in the draft provisions for the Model Rules presented in this report. Several aspects are reflected in article 1 on the sphere of application and in article 3 on the content and form of the payment order. Others are contained in articles 11 to 15 on the responsibility and liability of banks for improper execution of a payment order received. A difficult question is to

¹Report of the United Nations Commission on International Trade Law on the work of its nineteenth session, *Official Records of the General Assembly, Forty-first Session, Supplement No. 17 (A/41/17)*, para. 230.

know the degree to which the civil consequences of a funds transfer, such as the extent to which a funds transfer discharges an underlying obligation, should be reflected in the Model Rules. Such a provision has been included in article 16.

7. Subjects on which no provision is included for the present in these draft provisions include:

(a) The extent to which a rule might be modified by contract, since it will be possible to decide whether the Model Rules should be mandatory only as each issue is considered and when it is decided what legal form these Rules should take (A/CN.9/297, para. 31);

(b) Interpretation of the Model Rules (see A/CN.9/297, para. 32; but see article 3(3));

(c) Conflict of laws (A/CN.9/297, para. 36);

(d) Permitting a bank to correct an error by debiting an account without the consent of the customer (A/CN.9/297, para. 79; see article 9);

(e) Permitting a bank to reverse a credit to an account because it fails to receive cover (A/CN.9/297, paras. 95-96; see articles 9 and 16);

(f) Problems of evidence in case of dispute.

DRAFT PROVISIONS FOR MODEL RULES ON ELECTRONIC FUNDS TRANSFERS

I. General provisions

Article 1. *Sphere of application*

These rules apply to funds transfers made pursuant to a payment order [or to a debit transfer instruction] [where the originator's bank and the beneficiary's bank are in different countries].

Comment

1. The Working Group decided that the rules should first be prepared to apply to credit transfers, with the decision as to whether they should apply to debit transfers to be left to a later date (A/CN.9/297, para. 19). A payment order as defined in article 2 is a credit transfer instruction. The words "debit transfer instruction" have been inserted in square brackets to indicate that the decision on this issue is yet to be made.

2. The Working Group also decided that the Model Rules should not apply to the truncation of negotiable instruments (A/CN.9/297, para. 16). There is no specific exclusion in the text of the draft Model Rules on the belief that the sphere of application as now drafted does not include truncation.

3. As noted in comment 2 to article 3, the Model Rules are to apply without regard to the technology involved. This raises a question as to whether the title to the Model Rules should continue to refer to electronic funds transfers.

4. The Working Group decided that the Model Rules should concentrate on problems arising in international

funds transfers, but would have to consider both domestic and international aspects of such transfers. A decision would be made at a later time, perhaps after the substance of the Rules had been determined, on the extent to which the Rules should be considered to be applicable to domestic funds transfers (A/CN.9/297, para. 15; see also discussion in the Commission at its twenty-first session, A/43/17, para. 13). If the Model Rules were to be restricted to international funds transfers, the bracketed words at the end of the article would serve to so state and to define what is meant by an international funds transfer.

Article 2. *Definitions*

In these Rules:

(a) "Bank" means a financial institution which, as an ordinary part of its business, engages in funds transfers for itself or other parties [, whether or not it is recognized as a bank for other purposes];

(b) "Beneficiary" means the ultimate party to be credited or paid as a result of a funds transfer;

(c) "Cover" means reimbursement of a bank that has acted on a payment order;

[(d) "Entry date" means the date when entries are made in the records of an account;]

(e) "Execution date" means the date the sender has instructed the receiving bank to execute the payment order;

(f) "Funds" or "money" includes credit in an account kept by a bank whether denominated in a national currency or in a monetary unit of account that is established by an intergovernmental institution or by agreement of two or more States, provided that these Rules shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement;

(g) "Funds transfer" means the movement of funds between the originator and the beneficiary;

[(h) "Funds transfer transaction" means the movement of funds directly between two parties involving no intermediaries other than a payment or communications service;]

(i) "Intermediary bank" means a bank between the originator's bank and the beneficiary's bank through which the funds transfer passes;

(j) "Originator" means the issuer of the first payment order in a funds transfer;

(k) "Pay date" means the date when the funds are to be freely available to the beneficiary as specified by the originator;

[(l) "Payment date" means the date when the funds are made available to the beneficiary;]

(m) "Payment order" means an instruction addressed to a bank directing it to pay, or to cause another bank to pay, to the beneficiary a fixed or determinable amount of money [either in cash or by credit to an account];

(n) "Receiving bank" means the bank to which a payment order is delivered;

(o) "Sender" means the party who sends a payment order [, including the originator and any "sending bank"];

(p) "Value date" means the date when funds are to be at the disposal of the receiving bank.

Comment

In conformity with the decision of the Working Group, the terminology in English and French used in ISO 7982-1 (International Organization for Standardization, "Bank telecommunication—Funds transfer messages—Part 1: Vocabulary and data elements") has been used to the extent it was found to be consistent with the purposes and needs of the Model Rules (A/CN.9/297, para. 28). The source of the terms and their definitions is indicated below.

"Bank"—definition from EFT Legal Guide. The term "bank" is defined by ISO 7982-1 as "a depository financial institution".

"Beneficiary"—ISO 7982-1.

"Cover"—ISO 7982-1 uses "cover payment" with a slight difference in definition.

"Entry date"—ISO 7982-1.

"Execution date"—new term.

"Funds"—adaptation of definition of "money" in draft Convention on International Bills of Exchange and International Promissory Notes, article 6(1).

"Funds transfer"—ISO 7982-1.

"Funds transfer transaction"—ISO 7982-1.

"Intermediary bank"—same term as in ISO 7982-1 but definition differs. The definition here used includes all banks between originator's bank and beneficiary's bank. ISO 7982-1 includes only those banks between receiving bank and beneficiary's bank. The two definitions are consistent in spite of their formal differences.

"Originator"—slight modification of definition in ISO 7982-1.

"Pay date"—new term.

"Payment date"—slight modification of definition in ISO 7982-1.

"Payment order"—major modification of definition in ISO 7982-1, but consistent with it.

"Receiving bank"—ISO 7982-1.

"Sender"—used but not defined in ISO 7982-1.

"Value date"—ISO 7982-1.

II. Form and content of payment order

Article 3. Form and content of payment order

(1) A payment order may be in any form [, including both written and oral form,] and may be transmitted between the sender and the receiving bank by any means of communication.

(2) A payment order must be properly authenticated and contain at least the following data:

(a) an order to a bank to make the transfer and, if payment is not by credit to an account at the beneficiary's bank, the method of payment to the beneficiary;

(b) the identification of the sender;

(c) the identification of the receiving bank;

(d) the amount of the funds transfer, including the currency or unit of account, if that is not otherwise self-evident;

(e) the identification of the beneficiary;

(f) the identification of the beneficiary's bank.

(3) Any required or optional data may be represented by words, figures or codes. If a data element is represented by any combination of words, figures or codes and there is a discrepancy between them, each form of representation is equally valid and the sender shall be responsible for the payment order as executed by the receiving bank and any intermediary payment or communications service, unless the receiving bank or intermediary payment or communications service knew or ought to have known of the discrepancy.

Comment

1. Article 3 on the content and form of a payment order should be read in conjunction with the definition of a payment order in article 2. A payment order is a credit transfer instruction. No special term or definition has been given for a debit transfer instruction awaiting any later decision as to whether debit transfers will be covered by these Model Rules. The term "debit transfer instruction" is used in a bracketed provision in article 1.

2. At the Commission's direction, these Model Rules do not depend on specific technology. Although the reason for the preparation of the Model Rules is the development of electronic means of transmission and storage of payment orders, the Model Rules will also apply to other forms of transmission, including optical, paper or verbal. Many funds transfers that are electronic between banks commence with a paper-based payment order from the originator to its bank. In other cases one of the inter-bank payment orders may be paper-based even though all other aspects of the funds transfer may be electronic. The inclusion of verbal payment orders is not intended to authorize their use wherever they may now be prohibited. However, since verbal payment orders, and particularly those over the telephone, are known in some countries and those orders may order funds transfers to be made to other countries, it has been thought to be preferable to include them within the coverage of the Model Rules.

3. Normally a payment order goes only from the sender to the receiving bank. If the receiving bank is not the beneficiary's bank, it must send its own payment order (and thereby become a sender) to its receiving bank. The new payment order must have terms consistent with those in the payment order received (article 6(1)).

4. If the payment order received is paper-based, it may be possible for the bank to transmit the payment order received without issuing its own order. However, it would still take on the duties of a sender of a payment order (article 4(1)).

5. A message is a payment order if it meets the definition in article 2(m) whether or not it contains all of the data specified in article 3(2). However, all of the data specified in article 3 is necessary for the proper execution of the payment order and a sender that omits any of it must bear the consequences. Some of the data may be implied rather than stated, such as the currency when the payment order is transmitted over a transmission system restricted to a single currency.

6. Paragraph (2) requires the payment order to be authenticated, but no particular method or level of authentication is prescribed (A/CN.9/297, para. 42).

7. If the payment order is incomplete, the receiving bank is bound not to execute it (article 5(2)), but must give notice of its failure to act under article 8(1). If the receiving bank does act upon the incomplete order, it does so at its own risk.

8. A payment order may contain additional data, including additional instructions in regard to execution date, pay date or intermediary bank or transmission system to be used. For the obligation of the receiving bank in respect of such instructions, see articles 6(2) and (3), and 8.

9. Paragraph (3) provides that the data may be in words, figures or codes, the latter being often used in electronic message systems. If a given data element such as the amount or the account to be debited or credited is represented in more than one form, there may be a discrepancy between the two. Paragraph (3) provides that the receiving bank and any intermediary payment or communications system may rely on any one of these forms of data representation. This rule is to protect the bank that is programmed to read data elements that are represented in a particular way. However, if the bank knows or ought to know of the discrepancy, this provision would require it to enquire as to the correct data element. While this is a nuisance and will delay execution of the payment order, it is considerably easier with electronic communications than at an earlier time. One occasion when a bank ought to know of an error in a funds transfer (viz. discrepancy) is set out in article 5(2). For discussion in the Working Group, see A/CN.9/297, para. 33.

III. Duties of the parties

Article 4. *Obligations of sender*

(1) A sender is bound by authorized payment orders as issued or transmitted by it, and for any error or delay during the transmission of the order to the receiving bank, except as set forth in article 5(2).

(2) A payment order is authorized when it is sent or given to the receiving bank by the sender or by a person authorized to act for the sender in regard to orders of the type in question.

(3) A sender is bound by an unauthorized order when it was sent or given to the receiving bank by a person who was able to do so because of present or past employment with the sender or because of the negligence or bad faith of the sender or of an employee or agent of the sender.

(4) If the sender denies having authorized the order, the receiving bank has the burden of proof that the order was authorized by the sender or that the sender is bound by an unauthorized order under paragraph (3). If the sender denies that the order sent contained the data said to have been received, the receiving bank has the burden of proof of the content of the order received.

(5) A [sender] [sending bank] is bound to adhere to any message structure prescribed by the transmission system used or agreed between the parties [and is liable for any loss resulting from a failure to do so].

(6) A sender which has not made previous arrangements with the receiving bank as to how the receiving bank will be reimbursed for executing its instructions shall ensure that adequate cover is in place and duly advised to the receiving bank on or before the value date.

(7) A sender is bound to reimburse the receiving bank to the extent the receiving bank has properly executed the payment order of the sender [including any fees or costs charged or incurred by the receiving bank].

Comment

1. Under paragraph (1) a sender is bound by authorized payment orders as issued or transmitted by it. Errors made by the sender, by the sender's instructing party or by any previous party do not give a basis for the sender to deny its obligation to reimburse the receiving bank. Although article 5(2) may on occasion constitute an exception to this rule, it will seldom be applicable on the facts of the case. A sender is also liable for any error occurring during the transmission of the order. Article 5(2) will often constitute an exception to this rule since error checking procedures to be used by the receiving bank would often discover the error that had occurred.

2. The restriction in paragraph (2) that a payment order sent or given by a person other than the sender is authorized only if the person was authorized to act in regard to orders of the type in question is mitigated by paragraph (3) on unauthorized orders.

3. Paragraph (3) places a heavy burden of responsibility on a sender when the unauthorized instruction was issued by a person who was able to do so because of past or present employment. This does not restrict the category to persons who in their employment worked with payment orders. The employee may have simply had access to passwords or other means of issuing payment orders because of their presence in the place of employment.

4. While the sender carries the responsibility for many unauthorized payment orders and for errors caused in transmission, under paragraph (4) the receiving bank has the burden of proof of showing that the sender is responsible if such responsibility is denied.

5. Paragraph (5) is intended to strengthen the obligation to follow prescribed message structures. If the word "sender" is used, it would include non-bank originators. The last clause is in square brackets to indicate that this article may not be the proper location for a provision on liability of a party.

6. While paragraphs (6) and (7) are similar, they relate to somewhat different problems. Paragraph (6) is the requirement to make cover available before the receiving bank is required to act (see article 8(3)), unless previous arrangements have been made between the sender and the receiving bank.

7. Paragraph (7) has two elements: the sender must reimburse the receiving bank once the bank has acted and the sender must reimburse the receiving bank only to the extent the receiving bank has properly executed the payment order of the sender. It is to be noted that, although the possibility to effect reimbursement may be required prior to the receiving bank's execution of the order by the furnishing of cover, the obligation to reimburse the receiving bank arises as a result of the execution of the payment order.

8. The words "to the extent" in paragraph (7) may be seen in terms of the monetary amount to be reimbursed. If the sender's order is for 1,000 units and the receiving bank sends a new order for 10,000 units by mistake, or sends two orders for 1,000 units each, the sender needs to reimburse only 1,000 units. If the receiving bank sends a new order for 100 units, the sender needs to reimburse only for 100 units. Only when the receiving bank corrects its error by amending its payment order to 1,000 units or by sending a second payment order for 900 units would the sender be obligated to reimburse for the entire 1,000 units.

9. The words "to the extent" also limit the duty to reimburse if the receiving bank sends a new order to an incorrect subsequent bank and that error is never corrected so that the original order is not carried out.

10. The costs charged by the receiving bank relate to its charges for its services to the sender. The costs incurred by the receiving bank are the costs charged to it by the subsequent receiving bank. Except for the costs charged by the beneficiary's bank, those costs should cascade back to the originator. For the case in which those costs are deducted from the amount of the funds being transferred, see article 16(4).

Article 5. *Obligations of receiving bank*

(1) A receiving bank is bound either to execute the payment order or to notify the sender that it will not do so. If a receiving bank intends to delay executing a payment order beyond the time required by article 8 in order

to await notification that cover was available, it must notify its sender of that fact. If within the required time a receiving bank does not give notice that it will not act on a payment order, it may no longer give such notice and is bound to act on the order.

(2) A receiving bank is bound not to execute a payment order that it knows or ought to know to be in error or incomplete. If a receiving bank would have discovered an error or that the payment order was incomplete through the proper use of an error checking procedure that was required by the funds transfer system or was agreed upon with the sender, the bank ought to have known of the error or incompleteness.

Comment

1. Article 5 states the basic obligation of a receiving bank, i.e. to react to the payment order by executing the order or by giving notice that it will not do so (A/CN.9/297, para. 49). This obligation exists whether or not the bank had a prior relationship with the sender. A sender of a payment order expects it to be executed at the time indicated and in the manner indicated. The receiving bank may have reasons for not executing the payment order. These Rules do not attempt to distinguish between legitimate reasons and those that are not. However, if it is not going to execute the order, the receiving bank must notify the sender of that fact so that the sender can find another means of having the funds transfer carried out.

2. The means by which the receiving bank acts in conformity with a payment order are set out in articles 6 and 7. The time within which it must act or give notice are set out in article 8.

3. The Working Group decided that the receiving bank should not be required to give any reason for its refusal to act, although it would often be advantageous to the sender—or the originator—to know the reason (A/CN.9/297, para. 51).

4. In general, a sender is responsible for assuring that the payment order is complete. In order for it to be complete it must have all the data required by article 3(2). Article 6(2) may require that a receiving bank include other data in its payment order; the non-inclusion of such data does not render the payment order incomplete, even though it may make the bank responsible for any adverse consequences arising out of such non-inclusion.

5. Since a sender is responsible for any errors in the payment order as sent by it or that may have occurred in the transmission, a receiving bank is normally bound to act on a payment order in the terms in which that order was received. However, according to paragraph (2), a receiving bank should not execute a payment order that it knows or ought to know to be incomplete or in error. It is difficult to imagine the situation in which the receiving bank could claim not to have known of incompleteness. Whether the receiving bank knows or ought to know of an error depends on a number of factors, of which the type of error and the type of payment order are the most important.

6. The second sentence of paragraph (2) considers only one of the possible situations in which a bank ought to have known of an error, i.e. the use of an error checking procedure was required by the funds transfer system or had been agreed upon with the sender and the error was of such a type that it would have been discovered through proper use of the procedure.

Article 6. *Execution by receiving bank that is not beneficiary's bank*

(1) A receiving bank that is not the beneficiary's bank properly executes a payment order when, within the required time, it provides or arranges for cover and

(a) transmits the order to the beneficiary's bank or to the required or an appropriate intermediary bank,

(b) issues its own payment order containing instructions and other data consistent with the order received, or

(c) otherwise provides for completion of the funds transfer in an appropriate manner.

(2) If the payment order received contains an instruction as to the intermediary bank or banks, the funds transfer system or the means of transmission to be used, the receiving bank as sender shall execute the order received in compliance with that instruction. The payment order issued by the receiving bank as sender shall include any instructions for action of the receiving bank of that order necessary to implement the order in an appropriate manner.

(3) 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 funds 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 delay in completion of the funds transfer. The receiving bank acts within the time required by article 8 if it, in good faith and in the time required by that article, enquires of the sender as to the further actions it should take in light of the circumstances.

Comment

1. A receiving bank that is not the beneficiary's bank acts in conformity with the payment order received by becoming a sender of its own conforming order and arranging for cover within the required time. On occasion it may act in conformity with the order by sending a cheque rather than a payment order or by otherwise providing for completion of the funds transfer. Paragraph (1)(c) anticipates such possibilities.

2. In general, the instructions received must be followed, and the receiving bank is always authorized to do so. However, the receiving bank must be able to exercise some professional judgment whether it would be better to act in some other way. It is a delicate line as to the degree of discretion that should be given. The reasons for the instruction as to intermediary bank, funds transfer system or means of transmission to be used may have an importance to the sender that is not obvious to the receiving

bank. The receiving bank's wish—or perceived need—to act in some other manner may be personal to it (e.g. its relationship with the indicated intermediary bank) or may be general (e.g. the means of transmission indicated is not functioning for technical reasons out of the control of the receiving bank).

3. Paragraph (3) offers the receiving bank two alternatives to following the instructions received. It may exercise its good faith judgment that it is not feasible to follow the instruction or that doing so would cause excessive delay in completion of the funds transfer. In that case it may take the action it considers appropriate. Alternatively, it may enquire of the sender as to the further actions it should take in the circumstances.

Article 7. *Execution by beneficiary's bank*

(1) If the beneficiary maintains an account at the beneficiary's bank into which funds transfers are normally credited, the bank executes the order by:

(a) crediting the beneficiary's account;

(b) making the funds available for withdrawal or for transfer; and

(c) notifying the beneficiary as agreed between them of the availability of the funds.

(2) If the beneficiary does not maintain such an account, the bank executes the order by:

(a) making payment by the means specified in the order or by any commercially reasonable means; or

(b) giving notice to the beneficiary that it is holding the funds for the benefit of the beneficiary.

Comment

1. The purpose of a funds transfer is to effect payment to the beneficiary, usually by credit to its account, but also by payment in cash, issuing of a negotiable instrument or by other commercially reasonable means. Therefore, even though articles 13, 14 and 16 make it clear that the originator has fulfilled its obligation to the beneficiary, and the banking system has fulfilled its obligation to the originator, when the beneficiary's bank receives a correct payment order and cover has been arranged, it is appropriate for these Model Rules to set forth the obligations of the beneficiary's bank to the beneficiary in respect of the funds transfer. Article 7 is the first of the articles that considers this matter.

2. Article 7 distinguishes between the situation where the beneficiary maintains an account with the beneficiary's bank into which funds transfers are normally credited and where the beneficiary does not maintain such an account. In the former case prior to the deadline in article 8 the beneficiary's bank must take three actions to execute the instruction: credit the account, make the funds available and give notice. In the latter case the beneficiary's bank must take only one action prior to the deadline: either pay the amount in an appropriate manner or notify the beneficiary that it holds the funds available.

3. When the beneficiary maintains more than one account to which the payment order might be credited, and the payment order itself does not designate the appropriate account, this provision would permit the bank to make the designation. Article 16(1) is relevant to the related question as to the account that may be credited in order to discharge an underlying obligation.

4. The notification required by paragraph (1)(c) is "as agreed between [the beneficiary and the bank] of the availability of the funds." This rule presupposes the general desirability that bank customers receive prompt notice of credits to their account and that such notice is part of the funds transfer process. Paragraph (1)(c) permits banks and their customers to agree on the means by which such notice would be given. It also permits banks and their customers to agree that no notice need be given where, for example, the account was a numbered account. This rule should be compared to article 10.

Article 8. *Time to execute payment order or give notice*

(1) A receiving bank shall execute the payment order received, or give notice that it will not do so, within the time consistent with the terms of the order.

(2) When the payment order states a pay date, a receiving bank that is not the beneficiary's bank shall execute the order at such time as to assure in the ordinary course of events receipt by the beneficiary's bank of the payment order and cover by the pay date. The beneficiary's bank shall execute the order not later than on that date.

(3) When the payment order states an execution date, the receiving bank shall execute the order not later than on that date. When the payment order states a value date but no execution date, the execution date shall be deemed to be at the value date. Unless otherwise agreed, the receiving bank may not charge the sender's account prior to the execution date.

(4) When no execution, value or pay date is stated, the execution date shall be deemed to be the date the order is received, unless the nature of the order indicates that a different execution date is appropriate.

(5) 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.

(6) A receiving bank that receives a payment order too late to execute it in conformity with the provisions of paragraphs (2) and (3) nevertheless complies with those provisions if it executes the order on the day received regardless of any execution, value or pay date specified in the order.

(7) A notice that a payment order will not be executed must be given on the day the decision is made, but no later than the day the receiving bank was required to execute the order.

Comment

1. Payment orders may contain three different types of dates: execution dates when the receiving bank is to act; pay dates when the beneficiary's bank is to act and value dates when the receiving bank is to receive cover. A value date may also have the effect according to paragraph (3) of functioning as an execution date. In each case the receiving bank must act within the time consistent with the terms of the order.

2. Many payment orders contain no execution, value or pay date. In that case, according to paragraph (4), the payment order is normally to be effected on the day it is received.

3. Paragraphs (5) and (6) state two different types of relief from the time limits stated in the first four paragraphs. Paragraph (5) relates to payment orders received too late in the day for execution as part of that day's receipts. While paragraph (5) might normally apply to payment orders of a type that should receive same-day treatment, it might also apply to payment orders that are processed on a fixed multi-day (e.g. three-day) time schedule.

4. When a receiving bank receives a payment order too late to meet the obligatory execution date, paragraph (6) states that it must be executed on the day received.

5. If a receiving bank is not going to execute a payment order, article 5(1) states that it must give notice. Paragraph (7) states that at the latest the notice must be given when execution of the payment order would have been required. However, if the decision not to execute the order is made earlier, the notice must be given on the day the decision is made.

Article 9. *Revocation and amendment of payment order*

(1) A revocation or amendment of a payment order issued to a receiving bank that is not the beneficiary's bank is effective if it is received in sufficient time for the receiving bank to act on it before the receiving bank has transmitted the order received or has issued its own order implementing the order received.

(2) A sender may require a receiving bank that is not the beneficiary's bank to revoke or amend the payment order the receiving bank has transmitted or issued. A sender may also require a receiving bank to instruct the subsequent bank to which it transmits or issues an order to revoke or amend any order that the subsequent bank may in turn have transmitted or issued.

(3) A revocation or amendment of a payment order issued to the beneficiary's bank is effective if it is received in time for the bank to act on it before the earliest of the following:

(a) the bank receives the payment order, where the sender and the bank have agreed that the bank will execute payment orders received from the sender without notification that cover is in place;

(b) the bank receives both the payment order and notice that cover is available;

Variant A

(c) the bank credits the beneficiary's account [without reserving a right to reverse the credit if cover is not furnished] or otherwise pays the beneficiary;

Variant B

(c) the bank gives the beneficiary the [unconditional] right to withdraw the credit or the funds [, whether or not a fee or payment in the nature of interest must be paid for doing so];

Variant C

(c) the bank gives notice to the beneficiary that it has the right to withdraw the credit or the funds;

(d) 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.

(4) A sender may revoke or amend a payment order after the time specified in paragraph (1) or (3) only if the receiving bank agrees.

(5) A sender who has effectively revoked a payment order is not obligated to reimburse the receiving bank [except for costs and fees] and, if the sender has already reimbursed the receiving bank for any part of the payment order, it is entitled to recover from the receiving bank the amount paid.

(6) Any revocation of a payment order under the applicable law resulting from the death of the sender or of the originator or from determination of legal incapacity by a competent authority is binding on a receiving bank only if the bank knows of the death or determination of legal incapacity before the time specified in paragraph (1) or (3) of this article.

(7) A bank has no obligation to release the funds received if ordered by a competent court not to do so [because of fraud or mistake in the funds transfer.]

Comment

1. Only a payment order (and not a funds transfer) can be revoked or amended. Paragraphs (1) and (3) recognize this fact and give the rules in respect of revocation or amendment of a payment order issued to a receiving bank that is not the beneficiary's bank and to a receiving bank that is the beneficiary's bank respectively.

2. Paragraph (1) marks the end of the time for revocation of a payment order issued to a receiving bank that is not the beneficiary's bank as being the time when the bank sends its own order implementing the order received. It is at that time that the receiving bank becomes committed to the next bank in the chain. The paragraph also recognizes that the receiving bank will need a certain period of time to act on the revocation or amendment. It does not attempt to quantify the length of this period, which might be as short as seconds and might be as long as hours or, perhaps, even days.

3. Paragraph (3) recognizes that the originator's obligation is only to have a proper payment order with adequate cover arrive at the beneficiary's bank. Therefore, once that has happened, it is too late for the sender to revoke the order. In addition, the three versions of subparagraph (c) recognize that the beneficiary's bank may act on the order before it receives cover and that, having acted, it is too late for the sender to revoke or amend the order.

4. Paragraph (4) recognizes that on occasion a receiving bank will allow a payment order to be revoked or amended even though the time has passed because it knows that its credit party will permit the necessary reversal entries to be made.

5. Paragraph (2) gives a procedure whereby a sender can attempt to revoke a funds transfer even though it is too late for the sender to revoke its own payment order. The sender may require its receiving bank to revoke or amend the instruction that that bank has given and, if that revocation is too late, may require the order to revoke or amend to be sent from bank to bank until either a payment order is caught or the funds transfer is completed. There are essentially two alternative rules that could be adopted in place of the procedure proposed in paragraph (2). One possibility is that a sender could not revoke or amend the funds transfer once the time limit in paragraph (1) had passed in respect of its receiving bank, i.e. in most cases the originator's bank. A second possibility is that the originator or originator's bank could be given the right to notify the beneficiary's bank directly of the revocation or amendment. This would increase by a large factor the likelihood that the revocation or amendment would arrive at the beneficiary's bank prior to the payment order.

6. Revocation of a payment order is intended to return the parties to the situation they were in prior to the issue of the order. However, cover may already have been given for the order, in which case the cover must be repaid. Furthermore, the receiving bank would have a right to charge its costs and fees in receiving and processing the order and the revocation. Paragraph (5) considers these matters.

7. The death or determination of legal incapacity of the sender may revoke the payment order by operation of law. Paragraph (6) treats a revocation by operation of law in the same manner as a revocation by act of the sender. Accordingly, it is binding on the bank only when the bank knows of it.

8. Many revocations and amendments of payment orders are intended to correct errors, including the sending of the same order twice. Occasionally, a revocation or amendment is intended to stop a fraud. If the revocation or amendment is too late to be binding, it may still be effective because the receiving bank agrees to it in accordance with paragraph (4). If the receiving bank itself had a credit party, the receiving bank would undoubtedly have sought the approval of the credit party to the revocation or amendment. On occasion the credit party will refuse to cooperate, especially if fraud was involved. In that case, the sender (or originator) may have no choice but to sue for

return of the funds. In order to be sure that the funds remain available, the sender or originator may secure a court order that blocks the funds in some way.

9. In some countries it would be appropriate to include in the law of funds transfers a provision authorizing the courts to issue such orders and to set out the conditions under which they could be issued. In other countries such provisions would not be included in the law of funds transfers but only in the law of civil procedure. A similar question is faced in respect of allegedly fraudulent documentary letters of credit, standby letters of credit and guarantees (see discussion in A/CN.9/301, paras. 84-90). Paragraph (7) of this draft is limited to a statement that recognizes the effect on a bank of a court order not to release the funds. A revised provision may be considered in the light of the further work of the Commission in the field of standby letters of credit and guarantees.

Article 10. *Statement of debits and credits to an account*

(1) A bank shall make available to its account holders [at least every . . . month[s]] a notice or statement of the debits and credits to the account together with such information as is reasonably available to the bank that will enable the account holder to identify the source of the entries. The notice or statement shall be available as agreed between the bank and the account holder, and may be available by computer access.

(2) An account holder shall notify the bank within [. . .] [days] [months] after the statement is available of any error or of any unauthorized debit or credit.

(3) An account holder who fails to notify the bank as provided in paragraph (2) of this article shall be precluded from asserting any claim against the bank arising out of the error or unauthorized debit or credit and shall bear any loss to the bank or to any other person that results from such failure.

Comment

1. It is to the advantage of all parties that errors and fraud in funds transfers be discovered as soon as possible. The errors and fraud that are not discovered prior to the completion of the funds transfer will often be discovered only by the reconciliation of accounts by the sender (including originator), receiving bank and beneficiary. Errors that affect a sender may be discovered only by reconciliation of the beneficiary's account. In order to be sure that all parties are in a position to reconcile their accounts, paragraph (1) requires banks to make available to their account holders a statement of the debits and credits with sufficient information to identify the source of the entries (A/CN.9/297, para. 77). Account holders would include other banks as well as non-bank customers. No attempt is made to state what information would suffice.

2. While the bank is required to make the statement available, the paragraph does not say how it will be made available, except that it be as agreed between the bank and the account holder. Paragraph (1) specifically recognizes that the statement might be available by computer access;

it might also be sent in the mail or available at the bank itself.

3. The paragraph also does not specify when or how often the statement must be made available, although the suggestion that such a rule might be appropriate is contained in bracketed words. In some countries it is common practice to send such a notice on any day there is a debit or credit to the account. In other countries it is common practice for statements to be sent periodically, while in yet others no statement may be sent.

4. When the customer can access the record of account activity by computer terminal, especially if it can be done from the home or business establishment, the statement would be available as soon as the entries were made to the account.

5. The rule in paragraph (3) that an account holder who failed to notify the bank of any error or unauthorized debit or credit within the period of time set out in paragraph (2) would be responsible for losses that occurred should have the consequence of encouraging banks to send such notices as early as possible and to encourage account holders to review their statements and notify the bank of incorrect entries.

6. Paragraphs (2) and (3) apply to failure to notify that credits to the account were incorrect as well as that debits were incorrect. Therefore, they apply to failure to report errors in favour of the account holder as well as to its detriment. The provisions also applies to errors that result in the failure of a debit or credit to be reported by the bank. This rule is easy to apply to missing debits since the account holder should have a record of most of such debit items. On the other hand, failure to report a missing credit poses more difficult problems since the beneficiary often does not know when to expect the credit or, in some cases, whether to expect a credit.

IV. Responsibility and liability

Article 11. *Responsibility for proper execution of payment order*

(1) The originator's bank and each intermediary bank is responsible to the originator for the proper execution of the funds transfer as ordered in the originator's payment order. An intermediary bank has fulfilled its responsibility to the originator 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 it received within the time required by article 8.

(2) The funds transfer is properly executed if a payment order consistent with the payment order issued by the originator is received by the beneficiary's bank and cover is available to the beneficiary's bank for the order,

(a) when a pay date was stated on the originator's payment order, in sufficient time for the beneficiary's bank to execute the order on or before that date;

(b) when no pay date was stated on the originator's payment order, within an ordinary period of time for the type of payment order issued by the originator.

(3) A receiving bank [, other than the beneficiary's bank,] is responsible to its sender for the proper execution of the funds transfer as ordered in the sender's payment order.

Comment

1. Article 11 states the basic rule of responsibility; in conformity with the prevailing view in the Working Group (A/CN.9/297, para. 60), the originator's bank is responsible to the originator for the proper execution of the funds transfer. Each intermediary bank is also responsible to the originator in the same terms. Proper execution of the originator's order is defined in paragraph (2) as receipt by the beneficiary's bank within the proper time of a payment order for the correct amount, ordering payment or credit to the correct account.

2. Although the first sentence of paragraph (1) makes the originator's bank and every intermediary bank responsible to the originator for the proper execution of the funds transfer, that responsibility should not attach to an intermediary bank that received the payment order after any error that might have been made by another bank. Therefore, the second sentence of paragraph (1) states that a bank has fulfilled its responsibility if the payment order eventually received by the beneficiary's bank was consistent with the payment order received by the intermediary bank in question.

3. The purpose of the rule in paragraph (1) that the originator's bank is responsible for the proper execution of the funds transfer is to make it possible for the originator to turn to the only bank with which it has contact if the funds transfer is not executed properly. The originator is not required to find out why the funds transfer went wrong or by the actions or inactions of which bank. This is of particular importance in international funds transfers when the error or delay may have occurred in a foreign country.

4. The strictness of this rule is mitigated in three ways: by the exemption in article 15 of all banks from responsibility for circumstances beyond the control of the bank where the error or delay causing event occurred; the limit on liability for indirect losses in article 12; and the right of a bank under paragraph (3) of this article to hold its receiving bank responsible for the losses if it can show that the payment order that arrived at its receiving bank was consistent with the payment order it had received itself. By this mechanism the responsibility can be passed through the chain of banks until it reaches the bank where the error occurred.

Article 12. *Liability of receiving bank*

A receiving bank, other than the beneficiary's bank, that fails to execute a payment order, executes it improperly or executes it when it is bound not to do so is liable

(a) to the originator and to its sender for loss of interest that may have occurred as a result;

(b) to the originator, beneficiary or any other bank for loss caused by a change in exchange rates;

(c) to the originator and to its sender for any other loss that may have occurred as a result, but not for more than the amount of the originator's payment order.

Comment

1. If a receiving bank executes the payment order improperly, including the execution of an order it knew or ought to have known was incomplete or in error, the sender has no obligation under article 4(7) to reimburse the receiving bank. If it has already done so, it should be able to recover the reimbursement under general principles of law. Therefore, this article does not mention recovery of the principal amount of the funds transfer as a matter of liability.

2. The usual consequence of an error in the implementation of a funds transfer is that there is a delay in payment to or credit to the account of the beneficiary, i.e. there is an increase in the period of time between the time the originator's account is debited and the beneficiary's account is credited. The resulting loss in interest may be seen as having been suffered by the originator or sender, because its account was debited too early, or by the beneficiary, because its account was credited too late. Article 12 treats it as a loss suffered by the originator or sender as the case may be.

3. Subparagraph (b) considers an adverse movement of exchange rates as a result of a delay as a source of liability. A similar result would occur if the banks concerned were directed to effect the exchange at the better rate prevailing on the date the exchange did occur or on the date it should have occurred. Such a rule is contained in the draft Convention on International Bills of Exchange and International Promissory Notes, article 76(3). However, in the context of credit transfers such a rule might not give the proper result if delay at one bank caused a delay in effecting the exchange at a different bank.

4. The most controversial question in respect of the liability of banks for errors or delays in implementing funds transfers is whether they should be liable for indirect damages. See discussion in Working Group, A/CN.9/297, paras. 84-86. In most cases, the bank does not know the purpose of the funds transfer or the possible consequences arising out of delay. However, in some cases the originator's bank does know, and, where significant losses could occur, it could be argued that it would be the originator's bank's duty to notify any subsequent bank of the possible loss. It could also be argued that the existence of a pay date in the payment order informed all banks that payment by a particular date was important to the originator, but it would not tell them why or the consequences. In any case, it is evident that bank customers have grown increasingly dependent on the proper implementation of payment orders by the banking system and that those customers often suffer indirect damages when there is error or delay in effecting funds transfers.

5. Subparagraph (c) is an attempt to formulate a standard of liability for indirect damages that, nevertheless, has a built-in limit of liability. In no case could the bank be liable for more than the amount of the originator's payment order. While the limitation of liability is arbitrary, because it need not relate to the amount of the loss, it offers the advantage of being objective and of giving a basis for calculating liability insurance premiums. It is to be noted that the limit of liability is equal to the loss that could be suffered by a bank that caused an incorrect account to be credited from which it could not recover the funds. Since the bank would have no right of reimbursement for the amount credited, its loss would be the amount of the transfer.

6. A different approach to limiting the exposure of banks to indirect losses would be to provide that they would be liable for such losses only if the loss arose out of their gross negligence or, to reverse the burden of proof, they would be liable for such losses unless they proved that they had not been grossly negligent. Such a text was not proposed because the standard of gross negligence is subjective and is bound to differ in different countries, and because the maximum amount of liability in any one case would be undeterminable and, therefore, premiums for liability insurance would be difficult to calculate on anything approaching an actuarial basis.

Article 13. *Responsibility of beneficiary's bank*

The beneficiary's bank is responsible to the beneficiary for the proper execution of the payment order it has received and, if it will not or cannot execute the payment order, to its sender to give notice of that fact.

Comment

Since the originator fulfills its obligation to the beneficiary when the beneficiary's bank receives a proper payment order and cover, as of that time the obligations of the beneficiary's bank run only to the beneficiary. Even though the beneficiary's bank need not execute a payment order if no cover has been provided, and may not be able to do so if there has been an error in designation of the beneficiary, the beneficiary's bank remains responsible to its sender to give notice under article 5.

Article 14. *Liability of beneficiary's bank*

A beneficiary's bank that fails to execute a payment order or executes it improperly is liable to the beneficiary to the extent provided by the law governing the [account relationship] [relationship between the beneficiary and the bank].

Comment

For the sake of symmetry and completeness, the Model Rules might contain a provision referring to the liability of the beneficiary's bank to the beneficiary. The substance of the provision, however, may be thought to be beyond the sphere of application of the Model Rules.

Article 15. *Exemption from liability*

Variant A

A receiving bank and any bank to which the receiving bank is directly or indirectly responsible under article 11 is exempt from liability for a failure to perform any of its obligations if the bank proves that the failure was due to an impediment beyond the bank's control and that the bank could not reasonably be expected to have taken into account at the time of the funds transfer or to have avoided or overcome it or its consequences.

Variant B

A receiving bank and any bank to which the receiving bank is directly or indirectly responsible under article 11 is exempt from liability for any failure to execute an order or to give notice or for delay in doing so after the required time if the failure or delay was caused by the order of a court, interruption of communication facilities or equipment failure not involving a lack of ordinary care by the receiving bank, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the receiving bank, and the receiving bank exercised the diligence the circumstances required.

Comment

1. While the receiving bank has a contractual duty of results, it is not liable for a failure to execute an order or to give notice or for delay in doing so if the cause of the failure or delay was beyond its control. Two alternative versions are presented. Variant A is almost identical to the equivalent provision in the United Nations Convention on Contracts for the International Sale of Goods, article 79(1).

2. Variant B is drafted in the context of funds transfers. Interruption of communication facilities and equipment failure exempt a receiving bank from liability if two conditions are met: the interruption or equipment failure did not itself arise out of lack of ordinary care by the receiving bank and, as for all sources of exemption from liability, the receiving bank must exercise the diligence required by the circumstances. This may mean that the bank was required to have anticipated the possibility of the interruption or equipment failure that occurred and provided alternative means of executing payment orders in those circumstances.

3. Even though the bank is exempt from liability under article 12, it would not have executed the payment order properly and may have no right to be reimbursed by its sender. As a result it is possible that the receiving bank could suffer the loss of the principal amount of the transfer.

V. *Civil consequences of funds transfers*

Article 16. *Payment and discharge of monetary obligations; obligation of bank to account holder*

(1) Payment of a monetary obligation may be made by a funds transfer [to any account] [to any of the financial

institutions in which the creditor has an account] [denominated in the currency of the obligation] [in the country where the obligation is payable], unless [the creditor of the obligation has indicated that] the obligation is to be discharged by payment in a certain way or by transfer to a certain account.

(2) A creditor may terminate the right to discharge an obligation by payment into any one or more of the accounts indicated in paragraph (1) by notification to the bank or banks in respect of a single obligation, a class of obligations or by blocking the account if done so in such a manner and in sufficient time for the bank to act on it prior to discharge of the obligation under paragraph (3). If a creditor terminates the right to discharge an obligation by payment to an account, the obligation of a debtor who had originated a funds transfer to that account prior to notice of the creditor's action is suspended until the debtor is reimbursed for the funds transferred. The creditor is responsible for any loss and for all costs that arise out of the funds transfer and its termination.

(3) 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 at the earliest of the following:

(a) the bank receives the payment order, where the sender and the bank have agreed that the bank will execute payment orders received from the sender without notification that cover is in place;

(b) the bank receives both the payment order and notice that cover is available;

Variant A

(c) the bank credits the beneficiary's account [without reserving a right to reverse the credit if cover is not furnished] or otherwise pays the beneficiary;

Variant B

(c) the bank gives the beneficiary the [unconditional] right to withdraw the credit or the funds [, whether or not a fee or payment in the nature of interest must be paid for doing so];

Variant C

(c) the bank gives notice to the beneficiary that it has the right to withdraw the credit or the funds;

(d) 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.

(4) If one or more intermediary banks have deducted charges from the amount of the funds 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. The debtor is bound to compensate the creditor for the amount of those charges.

(5) 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 [and the obligation of the bank to the sender reduced or the obligation of the sender to the

bank increased] when a revocation or amendment of the payment order would no longer be effective under article 9.

Comment

1. This article contains a number of important rules that are associated with the funds transfer, though they do not have to do with the funds transfer itself. In many countries such rules would not be included in a law governing funds transfers, while in others they would be included. They are included in this draft because it is important to keep the problems in mind even if it were decided at a later time to exclude this article from the final text of the Model Rules.

2. Paragraphs (1) and (2) deal with the important rule that monetary obligations can be discharged by interbank funds transfers leading to credit to an account. While this general proposition is widely recognized today, remnants of the objections arising out of legal tender legislation still arise on occasion. Furthermore, in some countries it is not clear that any person other than the account holder has the right to deposit funds to an account. Paragraph (1) would overcome both objections.

3. Where payment to a specific account is specified in the contract, the obligation could be discharged only by credit to that account. Paragraph (1) offers certain alternatives if a creditor maintains more than one account and there is no specific account specified in the contract.

4. Whether an account to which payment is to be made has been specified or there are several alternative accounts to which payment might be made, the creditor may no longer wish payments to be made to a given account. The creditor may, for example, wish to close the account, in which case no further transfers to that account would be acceptable. The creditor may wish a particular payment made to a different account. Paragraph (2) recognizes the right of the creditor to make such changes at will until the obligation has been discharged under paragraph (3).

5. Article 16 does not consider problems that might arise for a debtor under exchange control regulations if the creditor designates payment in a different country from that originally designated. Article 16 does consider the problems that arise if the debtor has already commenced the funds transfer.

6. The time when the obligation is discharged is the same time when the sender would lose the right to revoke the payment order to the beneficiary bank under article 9(3). In many cases, the obligation would be discharged when the beneficiary's bank received the payment order because arrangements would be in existence between the sender and the beneficiary's bank whereby cover was automatically available.

7. Paragraph (3) also provides that at the same time the payment is discharged, the beneficiary's bank owes the beneficiary to the extent of the payment order received. From this amount the beneficiary's bank may deduct its

fees for executing the payment order, but those fees are the responsibility of the beneficiary and do not affect the originator of the funds transfer or the discharge of the obligation. Determination of the time the beneficiary's bank owes the beneficiary also determines the time when the funds would be subject to legal process against the assets of the beneficiary.

8. Paragraph (4) is concerned with a difficult problem when funds transfers pass through several banks. The originator is responsible for all charges up to the beneficiary's bank. So long as those charges are passed back to the originator, there are no difficulties. When this is not easily done, a bank may deduct its charges from the amount of the funds transferred. Since it may be impossible for an originator to know whether such charges will be deducted or how much they may be, especially in an international funds transfer, it cannot provide for this eventuality. Therefore, paragraph (4) provides that the obligation is discharged by the amount of the charges that have been deducted as well as by the amount received by

the beneficiary's bank; the originator would not be in breach of contract for late or inadequate payment. Nevertheless, it would be obligated to reimburse the beneficiary for those charges.

9. Paragraph (5) is the corollary to paragraph (3) in that it gives the rule as to when the account of a sender, including but not limited to the originator, is to be considered debited, and the amount owed by the bank to the sender reduced or the amount owed by the sender to the bank increased. That point of time is when the sender can no longer revoke or amend the payment order under article 9. It may be before or after the bookkeeping operation of debiting the account is accomplished. Paragraph (5) may have its most important application in determining whether credit is still available in the account holder's account against which there might be legal process. In the usual situation for a receiving bank that is not the beneficiary's bank that point of time is when it executes the payment order by sending a new payment order to the next bank.

C. Report of the Working Group on International Payments on the work of its eighteenth session (Vienna, 5-16 December 1988) (A/CN.9/318) [Original: English]

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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

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

2. The Working Group undertook the task at its sixteenth session (Vienna, 2 to 13 November 1987), at which it considered a number of legal issues set forth in a note of the Secretariat (A/CN.9/WG.IV/WP.35). The Group requested the Secretariat to prepare draft provisions based on the discussions during its sixteenth session for consideration at its seventeenth session (A/CN.9/297). At its seventeenth session (New York, 5 to 15 July 1988) the Working Group considered draft provisions prepared by the Secretariat as submitted in document A/CN.9/WG.IV/WP.37. At the close of its discussions the Working Group