

LEGISLATIVE DECREE

9 September 1965, No. 2.

Credit Instruments.

THE PRESIDENTE OF THE REPUBLIC

HAVING SEEN article 62 of the Constitution;

BY VIRTUE of the powers conferred to the Government by article 29 of the Banking Law No. 18 of 14th August 1963;

ON THE PROPOSAL of the Minister of Finance;

HAVING HEARD the Council of Ministers;

DECREES:

Article 1

The text of «Credit Instrument» with annexes A and B is hereby approved.

Article 2

Any other provision contrary to or inconsistent with those of the preceding article, is abrogated.

Article 3

This Legislative Decree shall enter into force on the ninetieth day following that of its publication.

Mogadiscio, 9 September 1965.

ADEN ABDULLA OSMAN

The Prime Minister
ABDIRIZAK HAGI HUSSEN

The Minister of Finance
AWIL HAGI ABDULLAHI

C R E D I T I N S T R U M E N T S

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CHAPTER I

Article 1

Nature and Validity

The Credit Instrument gives the legitimate holder the right of getting from the debtor, upon presentment of the instrument, the performance provided therein.

Article 2

Classification

The credit instrument is:

- a) to Bearer, if it is transferable by delivery;
- b) to Order, if transferable by endorsement;
- c) nominative, if transferable by certified annotation on the instrument and on the record of the drawer.

Article 3

Transformation of instruments

1. Bearer instruments may be converted into nominative upon request and at the expenses of the holder.

2. Nominative instruments may be converted into bearer instruments, upon request and at the expenses of the party whose name appears on the face of such an instrument, except the case in which the transformation of the instrument has been expressly barred by the drawer.

Article 4

Consolidation and Division of Instruments

1. Credit Instruments issued in series may be consolidated into one multiple instrument by the drawer, upon request and at the expenses of the holder.

2. Multiple instruments may, in the same manner, be fractioned into portions of minor amounts.

Article 5

Discharge of the Debtor

The debtor who carries out performance with respect to the holder of the instrument is discharged from the obligation, even though the holder is not the owner of the instrument, provided the performer be exempt from intentional wrong or from gross negligence.

Article 6

Exceptions which can be raised

1. A debtor may raise against the holder of a credit instrument:

- a) such defences as are personal to such holder;
- b) those arising from forgery of his own signature or those based on insufficient powers or legal capacity of representation at the time of issue;
- c) those based on defects in form, and those based on the literal context of the instrument;
- d) those based on the lack of conditions necessary for a plaintiff to exercise his rights of action.

2. A debtor may raise against the holder of the instrument the defenses based upon the personal relationship with the previous holders only such holder acted intentionally to the detriment of the debtor in acquiring the credit instrument.

Article 7

Effects of possession in good-faith

Whoever has acquired possession in good faith of a credit instrument, in accordance with the rules regulating the form of circulation thereof, is not subject to an action of replevin.

Article 8

Transfer of Accessory Rights

The transfer of a credit instrument includes also the transfer of all accessory rights therein.

Article 9

Validity of liens imposed on an instrument of credit

1. A pledge, sequestration, pawn, or any other lien established in a credit instrument, has no effect unless noted on the instrument itself.

2. The lien does not apply to premiums and to other speculative profits derived from the instrument.

Article 10

Usufruct on instruments

1. In the case of credit instruments subject to usufruct, the enjoyment of the usufructuary includes premiums and other speculative profits derived from the instrument.

2. The amount of premiums must be invested in a fruitful way, by agreement of the parties or, in default of it, by order of the judge.

Article 11

Special Credit Instruments

The provisions pertaining to credit instruments are also applicable to the following:

- a) instruments representing goods which give the legitimate holder the possession of the goods specified the-

- rein, together with the right of asking for their release and of disposing of them by a transfer of the instrument;
- b) stocks which give their legitimate holder all patrimonial and personal rights pertaining to the quality of being a member of the issuing commercial body.

Article 12

Improper Credit Instruments

The provisions relating to credit instruments are not applicable:

- a) to documents whose sole purpose is to identify the party entitled to obtain the performance (*Documents of Legitimacy*);
- b) to documents whose sole purpose is to consent to the transfer of a right without observing the formalities which accompany assignments (*Apparent Instruments*).

CHAPTER II

INSTRUMENTS TO BEARER

Article 13

Transfer of Instruments

Instruments to Bearer are transferable by delivery.

Article 14

Identification of the holder

The holder of a bearer instrument is entitled to demand compliance with the obligations mentioned therein, upon presentment of the instrument for payment.

Restrictions on power to issue

A credit instrument containing an obligation to pay a certain sum of money may not be issued to the bearer except in the cases provided by the Law.

Article 16

Mutilation of document

The holder of a bearer instrument which has been mutilated and is no longer fit to circulate, but is still unmistakably identifiable has the right to obtain from the party who issued it another instruments, upon return of the original and reimbursement of expenses.

Article 17

Loss or theft of Bearer Instruments

1. Unless special laws provide otherwise, cancellation of lost or stolen bearer instruments is not permitted.

2. However holder of a bearer instrument who can prove the loss or the theft thereof is entitled to obtain from the drawer the performance indicated therein, after the period for prescription of the instrument has expired.

3. A debtor who discharges the obligation in favour of the holder of the instrument prior to such a time of prescription is released, unless it is proved that he had knowledge of the deficit in the title of possession of the party who presented the instrument for payment.

4. In all cases the rights which the complainant has against the holder of the instrument are unaffected.

Article 18

Destruction of the Instrument

1. A possessor of a bearer instrument who proves the destruction thereof, has the right to demand from the drawer a duplicate or an equivalent instrument, against the payment of the relative expenses.

2. If proof of the destruction is not made satisfactorily, the provisions of the preceding Article shall be applicable.

3. The provisions of this Article and those contained in Article 17, paragraphs 2, 3 and 4 are not applicable to bank-notes.

CHAPTER III

INSTRUMENTS TO ORDER

Article 19

Identification of the holder

The holder of an instrument payable to order is entitled to exercise the rights mentioned therein through an unbroken chain of endorsements.

Article 20

Transfer of Instruments to order

1. The transfer of instruments to order is done through endorsement.

2. The endorsement shall be placed on the corresponding document and signed by the endorser.

3. The endorsement is effective also if it does not indicate the endorsee (blank endorsement).

4. The endorsement to bearer has the same effects as an endorsement in blank.

Article 21

Conditional or Partial Endorsements

1. Every condition imposed in an endorsement shall be considered as not having been written.

2. Partial endorsements are null and void.

Article 22

Effects of Endorsement

1. Endorsement transfers all rights inherent in the instrument.
2. If endorsement is made in blank, the holder may fill in his name or the name of a third party, make a new endorsement, or transfer the instrument to a third party without filling in the endorsement or making a new one.

Article 23

Unless the Law or a clause on the face of the instrument provide otherwise, an endorser is not liable for the non-performance of the obligation on the part of the issuer.

Article 24

Endorsement by a Collecting Agent or by Power of Attorney

1. If endorsements contain clauses granting power of attorney for collection, the endorsee may exercise all rights inherent in the instrument but may not endorse it; except on the basis of a power of attorney.
2. The issuer may raise against the endorsee by power of attorney only those defenses which he has against the endorser.
3. The validity of the power of attorney contained in an endorsement does not expire with the supervening death or incapacity of the endorser.

Article 25

Endorsement of an Instrument used as Security

1. If an endorsement contains the clause «in guarantee» or «pledged» the endorsee may exercise all rights inherent in the instrument, but any endorsement made by such endorsee has only the effects of an endorsement by power of attorney.

2. The issuer of the instrument may only raise against an endorser who is a guarantor the personal defenses which he might have against the endorser, unless the endorsee has acted intentionally to the detriment of the drawer in receiving the instrument.

Article 26

Assignment of Order Instrument

Acquisition of an order instrument by means other than endorsement produces the effects of an assignment.

Article 27

Procedure for Cancellation

1. In the case of loss, theft or destruction of the instrument, the holder may report to the debtor and demand the cancellation by petitioning the President of the Tribunal of the place in which the party principally liable must comply with the obligations contained in the instrument. The petition shall indicate the essential elements of the instrument and, if the instrument is in blank, other elements sufficient to identify it.

2. The President of the Tribunal, having ascertained the accuracy of the facts and the rights of the debtor, may decree cancellation and authorize payment of the instrument thirty days from the date of publication of the Decree in the Official Bulletin of the Republic, provided that in the meanwhile the actual holder of the instrument does not appear to object to the cancellation. If, at the time of publication, the instrument has not yet become due, this period of time runs from the date of maturity.

3. Notice of the Decree shall be given to the party of cancellation principally liable and the petitioner shall cause its publication in the Official Bulletin of the Republic.

4. If before receiving notice of the Decree of Cancellation, payment is made to the person who presents the instrument for payment, the debtor is released, notwithstanding the recourse which has been made.

Article 28

Objections by Actual Holder of the Instrument

1. Within the limit of time provided in the second paragraph of Article 27, the actual holder of the instrument may raise objec-

tions to the cancellation before the Tribunal which decreed such a cancellation, serving notice thereof on the party who sued for cancellation and on the debtor liable.

2. Objection is not admissible unless the instrument is deposited in the Office of the Clerk of the Court.

3. If the objection is overruled, the instrument is delivered to the party who petitioned for cancellation.

Article 29

Right of Petitioner during valid period for objection

Before the expiration of the limit of time established by the second paragraph of Article 27, the petitioner may perform all acts for the preservation of his rights and, if the instrument has matured or has become payable at right, he may demand payment upon posting bond, or request the deposit of the sum in the Court.

Article 30

Effects of Cancellation

1. After the period established by the second paragraph of Article 27 has expired without objections being raised, the instrument is no longer valid, except as concerns the rights of the actual holder against the party who obtained the cancellation.

2. The party who obtained cancellation may, by presentment of the pertinent decree and of a certificate of the Clerk of the Tribunal witnessing the fact that no objection has been made, demand the discharge of the obligation contained in the instrument, or, if the instrument is in blank or has not yet matured, he may demand its duplicate.

CHAPTER IV

NOMINATIVE INSTRUMENTS

Article 31

Identification of the holder

The holder of a nominative instrument is entitled to exercise the rights mentioned therein by reason of an entry in his favour recorded on the instrument and on the records of the issuing party.

Article 32

Transfer of Nominative Instruments

1. The transfer of a nominative instrument is generally effected by entering the name of the purchaser on the instrument and on the records of the issuer.
2. Unless otherwise provided by law, the transfer of the instrument may also be effected by the issuance of a new instrument made in the name of the new owner and with annotation in the record of the issuer.
3. A person who demands that the instrument be issued in favour of another person, or the issuance of a new instrument be made in the name of another person, shall prove his own identity and legal capacity to dispose of such rights, by means of certificate by a notary or exchange broker. If the issuance or the delivery is requested by the party acquiring the instrument, he shall have to produce the instrument and prove his rights by means of an authenticated document.
4. The entries in the record and on the instrument are made at the behest and under the responsibility of the issuer.
5. An issuer who effects a transfer in the manner provided by Law is exonerated from all responsibility, except in the case of negligence.

Article 33

Transfer by Endorsement

1. Unless otherwise provided by law, a nominative instrument may also be transferred by endorsement duly authenticated by a notary or exchange broker.
2. The endorsement must be dated and signed by the endorser and must contain the name of the endorsee. If the instrument is not entirely released, the signature of the endorsee is also required.
3. Transfer by endorsement has no effect with regard to the issuer until entry thereof is made in the records. An endorsee who proves himself to the holder of an instrument by means of an unbroken chain of endorsements is entitled to obtain the entry of the transfer in the records of the issuer.

Article 34

Liens imposed on credit evidenced by instruments

1. No lien on the credit evidenced by the instrument is effective with regard to the issuer or to third parties, unless the lien is evidenced by a corresponding entry in the instrument and in the records.

2. The provisions of the second paragraph of Article 32 apply for the formalities of entry.

Article 35

Usufruct of Credit

Whoever has the usufruct of a claim contained in a nominative instrument has the right to obtain an instrument separate from the one of the owner.

Article 36

Pledges

1. A nominative instrument may be pledged by means of delivery of such instrument, endorsed with the clause «in guarantee» or other similar endorsement.

2. The endorsee in such forms of endorsement may not transfer the instrument except through endorsement by power of attorney.

Article 37

Cancellation

1. In the case of loss, theft or destruction of the nominative instrument the person whose name appears on the face of the instrument and the endorsee may report the fact to the issuer and demand the cancellation of the instrument by petitioning the Tribunal in accordance with Article 27 of this Decree.

2. In the case of loss, theft or destruction of nominative shares during the period established by the provision contained in the second paragraph of Article 27, the petitioner may exercise all rights inherent in such shares, except for the posting bond, if necessary.

3. Cancellation extinguishes the instrument, but does not prejudice the rights of the holder against the party who obtained the new instrument.

CHAPTER V

FINAL PROVISIONS

Article 38

Commitment to Special Provisionh

The general provisions of this Decree are applied unless otherwise specified by special provisions in the following Articles.

Article 39

Bills of Exchange and Promissory Notes

The Bills of Exchange and the Promissory Notes are regulated in conformity with the Geneva Convention of 17th June 1930, on the basis of Annex A.

Article 40

Cheques and Banker's drafts

The Cheques and the Banker's Drafts are regulated in conformity with the Geneva Convention of 19th March 1931, on the basis of Annex B.

Article 41

Bank-Notes

The Bank-notes and other public instruments of the Issuing Institutions are regulated by special Laws.

Article 42

Other Instruments

Shares and bonds of commercial companies, instruments of deposits, instruments of transport and other similar documents are regulated by special provisions of the Civil, Commercial and Maritime Codes.

**PROVISIONS ON THE BILLS OF EXCHANGE AND THE
PROMISSORY NOTES**

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TITLE I

BILLS OF EXCHANGE

CHAPTER I

ISSUE AND FORM OF A BILL OF EXCHANGE

Article 1

A bill of exchange contains:

- a) the term «bill of exchange» inserted in the body of the instrument and expressed in the language employed in drawing up the instrument,
- b) an unconditional order to pay a determinate sum of money,
- c) the name of the person who is to pay (drawee),
- d) a statement of the time of payment,
- e) a statement of the place where payment is to be made,
- f) the name of the person to whom or to whose order payment is to be made (beneficiary),
- g) a statement of the date and the place where the bill is issued,
- h) the signature of the person who issues the bill (drawer).

Article 2

1. An instrument in which any of the requirements mentioned in the preceding Article is wanting is invalid as a bill of exchange, except in the cases specified in the following paragraphs.

2. A bill of exchange in which the time of payment is not specified is deemed to be payable at sight.

3. In default of special mention, the place specified beside the name of the drawee is deemed to be the place of payment, and at the same time the place of the domicile of the drawee.

4. A bill of exchange which does not mention the place of its issue is deemed to have been drawn in the place mentioned beside the name of the drawer.

5. If several places for payment are indicated, it is understood that the holder is entitled to submit in any of them the bill of exchange for acceptance and payment.

Article 3

1. A bill of exchange may be drawn payable to the drawer's order.

2. It may be drawn on the drawer himself.

3. It may be drawn for account of a third person.

Article 4

1. A bill of exchange is payable at the domicile of a third person either in the locality where the drawee has his domicile or in another locality.

2. If it is not written that the payment will be made at the third party by the drawee, it is understood that it will be made by the third party.

Article 5

1. When a bill of exchange is payable at sight, or at a fixed period after sight, the drawer may stipulate that the sum payable shall bear interest. In the case of any other bill of exchange, this stipulation is deemed not to be written. The rate of interest must be specified in the bill; in default of such specification, the stipulation shall be deemed not to be written.

2. Interest runs from the date of the bill of exchange, unless some other date is specified.

Article 6

1. When the sum payable by a bill of exchange is expressed in words and also in figures, and there is discrepancy between the two, the sum denoted by the words is the amount payable.

2. Where the sum payable by a bill of exchange is expressed more than once in words or more than once in figures, and there is discrepancy, the smaller sum is the sum payable.

Article 7

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

Article 8

Every bill of exchange must indicate the name of the person or the firm undertaking the obligation.

Article 9

The emancipated underage not authorized to stay in business, and the disabled persons are not to enter any bill of exchange obligations if their signature is not accompanied by that of their guardian with the clause «for assistance» or other similar endorsements. In default of such clause or of equivalent one, the guardian is personally bound.

Article 10

The parent or the guardian not authorized to practising business on behalf of the under age or of the emancipated person can enter a bill of exchange obligation on their behalf, with the authorization of the competent Tribunal.

Article 11

Whosoever puts his signature on a bill of exchange as representing a person for whom he had no power to act is bound himself

as a party to the bill 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 power.

Article 12

1. The power of entering obligations in the name and on behalf of third parties does not necessarily imply the faculty of entering bill of exchange obligations, unless otherwise evidenced.

2. The authority of entering obligations in the name and on behalf of a businessman includes also the authority of entering bill of exchange obligations, provided that the representation deed, published in accordance with the provisions of the Law, does not state otherwise.

Article 13

1. The drawer guarantees both acceptance and payment.

2. He may release himself from guaranteeing acceptance. Every stipulation by which he releases himself from the guarantee of payment is deemed not to be written.

Article 14

1. If a bill of exchange, 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 bill of exchange in bad faith or, in acquiring it, has been guilty of gross negligence.

2. The holder forfeits the right of filling up blank bills after three years from the day of issue of the bill. This forfeiture however is not chargeable to the faith holder who had received the instrument already completed.

CHAPTER II

ENDORSEMENTS

Article 15

1. Every bill of exchange, even if not expressly drawn to order, may be transferred by means of endorsement.

2. When the drawer has inserted in a bill of exchange the words «not to order» or an equivalent expression, the instrument can only be transferred according to the form, and with the effects of an ordinary assignment.

3. The bill may be endorsed even in favour of the drawee, whether he has accepted or not, or of the drawer, or of any other party to the bill. These persons may re-endorse the bill.

Article 16

1. An endorsement must be unconditional. Any condition to which it is made subject is deemed not to be written.

2. A partial endorsement is null and void.

3. An endorsement «to bearer» is equivalent to an endorsement in blank.

Article 17

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

2. 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 bill of exchange or on the slip attached thereto (allonge).

Article 18

1. An endorsement transfers all the rights arising out of a bill of exchange.

2. If the endorsement is in blank, the holder may:

a) fill up the blank either with his own name or with the name of some other persons,

b) re-endorse the bill in blank, or to some other persons,

c) transfer the bill to a third person without filling up the blank, and without endorsing it.

Article 19

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

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

Article 20

1. The possessor of a bill of exchange is deemed to be the lawful holder if he establishes his title to the bill through an uninterrupted series of endorsements, even if the last endorsement is in blank. In this connection, cancelled endorsements are deemed not to be written. When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the bill by endorsement in blank.

2. Where a person has been dispossessed of a bill of exchange, in any manner whatsoever, the holder who establishes his right thereto in the manner mentioned in the preceding paragraph is not bound to give up the bill unless he has acquired it in bad faith, or unless in acquiring it he has been guilty of gross negligence.

Article 21

A person sued on a bill of exchange 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 bill, has knowingly acted to the detriment of the debtor.

Article 22

1. When an endorsement contains the statements «value in collection», «for collection», «by procuration», or any other phrase implying a simple mandate, the holder may exercise all rights arising out of a bill of exchange, but he can only endorse it in his capacity as agent.

2. In this case, the parties liable can only set up against the holder defences which could be set up against the endorser.

3. 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 23

1. When an endorsement contains the statements «value in security», «value in pledge», or any other statement implying a pledge, the holder may exercise all the rights arising out of the bill of exchange, but an endorsement by him has the effects only of an endorsement by an agent.

2. The parties liable cannot set up against the holder defences founded on their personal relations with the endorser, unless the holder, in receiving the bill, has knowingly acted to the detriment of the debtor.

Article 24

1. An endorsement after maturity has the same effects as an endorsement before maturity. Nevertheless, an endorsement after protest for non payment, or after the expiration of the limit of time fixed for drawing up the protest, operates only as an ordinary assignment.

2. Failing proof to the contrary, an endorsement without date is deemed to have been placed on the bill before the expiration of the limit of time fixed for drawing up the protest.

Article 25

1. With the assignment of a bill of exchange deriving from an endorsement made after the protest for non-payment or after the expiration of the limit of time fixed for drawing up the protest, or deriving from separate deed, although preceding the expiration date, the rights of the assignee for the bill of exchange are transmitted to the assignor. But the assignee is still subject to the exceptions chargeable to the assignor.

2. The assignee has the right to be given the bill of exchange.

CHAPTER III

ACCEPTANCE

Article 26

Until maturity, a bill of exchange may be presented to the drawee for acceptance at his domicile, either by the holder or by a person who is merely in possession of the bill.

Article 27

1. In any bill of exchange, the drawer may stipulate that it shall be presented for acceptance with or without fixing a time limit for presentment.
2. In any bill of exchange, the drawer may stipulate that presentment for acceptance shall not take place before a named date.
3. Except in the case of a bill of exchange payable at the address of a third party or in a locality other than that of the domicile of the drawee, or, except in the case of a bill drawn payable at a fixed period after sight, the drawer may prohibit presentment for acceptance.
4. Unless the drawer has prohibited acceptance, every endorser may stipulate that the bill shall be presented for acceptance, with or without fixing a limit of time for presentment.

Article 28

1. Bills of exchange payable at a fixed period after sight must be presented for acceptance within one year of their date.
2. The drawer may abridge or extend this period.
3. These periods may be abridged by the endorsers.

Article 29

1. The drawee may demand that a bill shall be presented to him a second time on the day after the first presentment. Parties interested are not allowed to set up that this demand has not been complied with unless this request is mentioned in the protest.
2. The holder is not obliged to surrender to the drawee a bill presented for acceptance.

Article 30

1. An acceptance is written on the bill of exchange. It is expressed by the word «accepted» or any other equivalent term. It is signed by the drawee. The simple signature of the drawee on the face of the bill constitutes an acceptance.

2. When the bill is payable at a certain time after sight, or when it must be presented for acceptance within a certain limit of time in accordance with a special stipulation, the acceptance must be dated, as of the day when the acceptance is given, unless the holder requires that it shall be dated as of the day of presentment. If it is undated, the holder, in order to preserve his right of recourse against the endorsers and the drawer, must authenticate the omission by a protest drawn up within the proper time.

Article 31

1. An acceptance is unconditional, but the drawee may restrict it to part of the sum payable.

2. Every other modification introduced by an acceptance into the tenor of the bill of exchange operates as a refusal to accept. Nevertheless, the acceptor is bound according to the terms of his acceptance.

Article 32

1. When the drawer of a bill has indicated a place of payment other than the domicile of the drawee without specifying a third party at whose address payment must be made, the drawee may name such third party at the time of the acceptance. In default of this indication, the acceptor is deemed to have undertaken to pay the bill himself at the place of payment.

2. If a bill is payable at the domicile of the drawee, the latter may in his acceptance indicate an address in the same place where payment is to be made.

Article 33

1. By accepting, the drawee undertakes to pay the bill of exchange at its maturity.

2. In default of payment, the holder, even if he is the drawer, has a direct action on the bill of exchange against the acceptor for all that can be demanded in accordance with Articles 55 and 56.

3. The drawee, once he has accepted, is bound even if he ignored the bankruptcy of the drawer.

Article 34

1. Where the drawee who has to put his acceptance on a bill has cancelled it before restoring the bill, acceptance is deemed

to be refused. Failing proof to the contrary, the cancellation is deemed to have taken place before the bill was restored.

2. Nevertheless, if the drawee has notified his acceptance in writing to the holder or to any party who has signed the bill, he is liable to such parties according to the terms of his acceptance.

CHAPTER IV

A V A L S

Article 35

1. Payment of a bill of exchange may be guaranteed by an «aval» as to the whole or part of its amount.

2. This guarantee may be given by a third person or even by a person who has signed as a party to the bill.

Article 36

1. The «aval» is given on the bill itself and on the «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».

2. It is deemed to be constituted by the mere signature of the giver of the «aval» placed on the face of the bill, except in the case of the signature of the drawee or the drawer.

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

Article 37

1. The giver of an «aval» is bound in the same manner as the person for whom he has a guarantor.

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

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

CHAPTER V
M A T U R I T Y

Article 38

1. A bill of exchange may be drawn payable:
 - a) at sight;
 - b) at a fixed period after sight;
 - c) at a fixed period after date;
 - d) at a fixed date.
2. Bills of exchange at other maturities or payable by instalments are null and void.

Article 39

1. A bill of exchange at sight is payable on presentment. It must be presented for payment within a year of its issue. The drawer may abridge or extend this period. These periods may be abridged by the endorsers.
2. The drawer may prescribe that a bill of exchange payable at sight must not be presented for payment before a named date. In this case, the period for presentment begins from the said date.

Article 40

1. The maturity of a bill of exchange payable at a fixed period after sight is determined either by the date of the acceptance or by the date of the protest.
2. In the absence of the protest, an undated acceptance is deemed, so far as regards the acceptor, to have been given on the last day of the limit of time for the presentment for acceptance.

Article 41

1. Where a bill of exchange is drawn at one or more months after the date or after sight, the bill matures on the corresponding date of the month when payment must be made. If there is no corresponding date, the bill matures on the last day of this month.
2. When a bill of exchange is drawn at one or more months and a half after date or sight, entire months must first be calculated.

3. If the maturity is fixed at the commencement, in the middle (mid-January or mid-February, etc.) or at the end of the month, the first fifteenth or last day of the month is to be understood.

4. The expression «eight days» or «fifteen days» indicates not one or two weeks, but a period of eight or fifteen actual days.

5. The expression «half month» means a period of fifteen days.

Article 42

1. When a bill of exchange is payable on a fixed day in a place where the calendar is different from the calendar in the place of issue, the day of maturity is deemed to be fixed according to the calendar of the place of payment.

2. When a bill of exchange drawn between two places having different calendars is payable at a fixed period after date, the day of issue is referred to the corresponding day of the calendar in the place of payment, and the maturity is fixed accordingly.

3. The time for presenting bills of exchange is calculated in accordance with the rules of the preceding paragraph.

4. These rules do not apply if a stipulation in the bill or even the simple terms of the instrument indicate an intention to adopt some different rule.

CHAPTER VI

P A Y M E N T

Article 43

1. The holder of a bill of exchange payable on a fixed day or at a fixed period after date or after sight must present the bill for payment either on the day on which it is payable or no one of the two business days which follow.

2. The presentment of a bill of exchange at a clearing-house is equivalent to a presentment for payment.

Article 44

1. The bill of exchange must be presented for payment in the place and at the address indicated in the instrument.
2. In case of shortage of said address, it must be presented for payment:
 - a) at the domicile of the drawee, or to the person indicated in the bill;
 - b) to the domicile of the person accepting by intervention, or of the person indicated on the bill to pay on his behalf;
 - c) to the domicile of the person actually indicated.

Article 45

1. The drawee who pays the bill of exchange may require that it shall be given up to him receipted by the holder.
2. The holder may not refuse partial payment.
3. In case of partial payment the drawee may require that mention of this payment shall be made on the bill, and that a receipt thereof shall be given to him.

Article 46

1. The holder of a bill of exchange cannot be compelled to receive payment thereof before maturity.
2. The drawee who pays before maturity does so at his own risk and peril.
3. He who pays at maturity is validly discharged, unless he has been guilty of fraud or gross negligence. He is bound to verify the regularity of the series of endorsements, but not the signatures of the endorsers.

Article 47

1. When a bill of exchange is drawn payable in a currency which is not that of the place of payment, the sum payable may be paid in the currency of the country, according to its value on the

date of maturity. If the debtor is in default, the holder may at his option demand that the amount of the bill be paid in the currency of the country according to the rate on the day of maturity or the day of payment.

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

3. 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 foreign currency).

4. If the amount of the bill of exchange 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.

Article 48

1. When a bill of exchange is not presented for payment within the limit of time fixed by Article 43, every debtor is authorized to deposit the amount with the competent authority at the charge, risk and peril of the holder.

2. For the bills of exchange payable by the State, the competent authority to receive the deposit is the Issuing Body.

CHAPTER VII

RECOURSE FOR NON-ACCEPTANCE OR NON-PAYMENT

Article 49

The bill of exchange action can be «direct» or «of recourse». It is «direct» when it is set up against the accepting persons and their guarantors. It is «of recourse» when it is set up against any other liable party.

Article 50

The holder may exercise his right of recourse against the endorsers, the drawer and the other parties liable:

At maturity: if the payment has not been made.

Even before maturity:

- a) if there has been total or partial refusal to accept,
- b) in the event of the bankruptcy of the drawee, whether he has accepted or not, or in the event of a stoppage of payment in his part, even when not declared by a judgement, or where execution has been levied against his goods without result.
- c) in the event of the bankruptcy of the drawer of a non-acceptable bill.

Article 51

1. Default of acceptance or of payment must be evidenced by an authentic act (protest for non-acceptance or non-payment).

2. Protest for non-acceptance must be made within the limit of time fixed for presentment for acceptance. If in the case contemplate by Article 29, paragraph 1, the first presentment takes place on the last day of that time, the protest may nevertheless be drawn up on the next day.

3. Protest for non-payment of a bill of exchange payable on a fixed day or at a fixed period after date or sight must be made on one of the two business days following the day on which the bill is payable. In the case of a bill payable at sight, the protest must be drawn up under the conditions specified in the foregoing paragraph for the drawing up of a protest for a non-acceptance.

4. Protest for non-acceptance dispenses with presentment for payment and protest for non-payment.

5. If there is a stoppage of payment on the part of the drawee, whether he has accepted or not, or if execution has been levied against his goods without result, the holder cannot exercise his right of recourse until after presentment of the bill to the drawee for payment and after the protest has been drawn up.

6. If the drawee, whether he has accepted or not, is declared bankrupt, or in the event of the declared bankruptcy of the drawer of a non-acceptable bill, the production of the judgement declaring the bankruptcy suffices to enable the holder to exercise his rights of recourse.

Article 52

1. The holder must give notice of non-acceptance or non-payment to his endorser and to the drawer within the four business days which follow the day for protest or, in case of a stipulation

«retour sans frais», the day for presentment. Every endorser must, within the two business days following the day on which he receives notice, notify this endorser of the notice he has received, mentioning the names and addresses of those who have given 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.

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

3. Where an endorser either has not specified his address or has specified it in illegible manner, it is sufficient that notice should be given to the preceding endorser.

4. A person who must give notice may give it in any form whatever, even by simply returning the bill of exchange.

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

6. A person who does not give notice within the limit of time mentioned above does not forfeit his rights. He is responsible for the injury, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange.

Article 53

1. The drawer, an endorser, as a person guaranteeing payment by «aval» (avaliseur) may, by the stipulation «retour sans frais», «sans protest», or any other equivalent expression written on the instrument and signed, release the holder from having a protest of non-acceptance or non-payment drawn up in order to exercise his rights of recourse.

2. This stipulation does not release the holder from presenting the bill within the prescribed time, or from the notices he has to give. 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.

3. This stipulation is written by the drawer, it is operative in respect of all persons who have signed the bill; 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, he must bear the expenses thereof. When the stipulation emanates from an endorser or avaliseur, the cost of the protest, if one is drawn up, be recovered from all the persons who have signed the bill.

Article 54

1. All drawers, acceptors, endorsers or guarantors by «aval» of a bill of exchange are jointly and severally liable to the holder.

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

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

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

Article 55

1. The holder may recover from the person against whom he exercises his rights of recourse:

- a) the amount of the unaccepted or unpaid bill of exchange with interests, if interest has been stipulated for;
- b) the interests at maturity at the rate indicated in the bill according to the provisions of Article 5 or, in default of this, the official rate;
- c) the expenses of protest and of the notice given as well as other expenses.

2. If the right of recourse is exercised before maturity, the amount of the bill shall be subject to a discount. This discount shall be calculated according to the official rate of discount (bank-rate) ruling on the date when recourse is exercised at the place of the domicile of the holder.

Article 56

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

- a) the entire sum which he has paid;
- b) interest on said sum calculated at the rate indicated in the bill according to the provisions of Article 5 or, in its

default, at the official rate practised on the day when he made the payment;

- c) any expenses which he has incurred.

Article 57

1. Every party liable against whom a right of recourse is or may be given up to him with the protest and a receipted account.

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

Article 58

In the case of the exercise of the right of recourse after a partial acceptance, the party who pays the sum in respect of which the bill has not been accepted can require that this payment shall be specified on the bill and that he shall be given a receipt therefor. The holder must also give him a certified copy of the bill, together with the protest, in order to enable subsequent recourse to the exercised.

Article 59

1. Every person having right of recourse may, in the absence of a agreement to the contrary, reimburse himself by means of a fresh bill (redraft) to be drawn at sight on one of the parties liable to him and payable at the domicile of that party.

2. The redraft includes, in addition to the sums mentioned in Articles 55 and 56, brokerage and the cost of stamping the redraft.

3. If the redraft is drawn by the holder, the sum payable is fixed according to the rate for a sight bill drawn at the place of his domicile. If the redraft is drawn by an endorser, the sum payable is fixed according to the rate for a sight bill drawn at the place where the drawer of the redraft is domiciled upon the place of domicile of the party liable.

Article 60

1. After the expiration of the limits of time fixed:

- a) for the presentment of a bill of exchange drawn at sight or at a fixed period after sight, or with a clause of «*retour sans frais*»;

- b) for drawing up the protest for non-acceptance or non-payment; the holder loses his rights or recourse against the other parties liable, with the exception of the acceptor.

2. In default of presentment for acceptance within the limit of time stipulated by the drawer, the holder loses his rights of recourse for non-payment, as well as for non-acceptance, unless it appears from the terms of the stipulation that the drawer only meant to release himself from the guarantee of acceptance.

3. If the stipulation for a limit of time for presentment is contained in an endorsement, the endorser alone can avail himself of it.

Article 61

1. Should the presentment of the bill of exchange of the drawing up of the protest within the prescribed limits of time be prevented by an insurmountable obstacle (legal prohibition, prescription legal) by any State or other case of *vis major*), these limits of time shall be extended.

2. The holder is bound to give notice without delay of the case of *vis major* to his endorser and to specify this notice, which he must date and sign, on the bill or on the allonge; in other respects the provisions of Article 52 shall apply.

3. When *vis major* has terminated, the holder must without delay present the bill of exchange for acceptance and payment and, if need be, draw up the protest.

4. If *vis major* continues to operate beyond thirty days after maturity, recourse may be exercised, and neither presentment nor the drawing up of a protest shall be necessary.

5. In the case of bills of exchange drawn at sight or at a fixed period after sight, the time-limit of thirty days shall run from the date on which the holder, even before expiration of the time for presentment, has given notice of *vis major* to his endorser. In the case of bills of exchange drawn at a certain time after sight, the above time-limit of thirty days shall be added to the period after sight specified in the bill of exchange.

6. Facts which are purely personal to the holder or to the person whom he has entrusted with the presentment of the bill or drawing up of the protest are not deemed to constitute cases of *vis major*.

Article 62

The bill of exchange action does not take place among several liable persons having similar position in the bill of exchange, and the case is solved with the provisions pertaining to the joint obligations.

Article 63

1. The bill of exchange has the effects of an executory title for the capital and the accessories, according to the provisions of Article 55, 56 and 59.

2. The bill of exchange issued abroad has the same effects as long as these are recognized by the laws of the place where the bill of exchange has been issued.

Article 64

Opposition does not stop the execution, but the President of the competent Tribunal can, upon recourse of the opponent party refusing to acknowledge his signature or the representation or pleading serious and well-grounded reasons, with motivated provision not subject to appeal and after examining the documents submitted, wholly or partially suspend the executory deeds, against proper security.

Article 65

1. In the bill of exchange lawsuits, the debtor can only appeal against the invalidity of the bill of exchange, in accordance with the provisions of Article 2 and against matters not forbidden by Article 21.

2. If the proceedings require a long investigation, the Judge, upon request of the creditor, shall pass a temporary judgement with or without caution money. He can also grant, upon request of the debtor, when serious reason concur, the suspension of the execution procedure imposing, if he so decides, a proper caution money.

3. Should the suspension be already granted with the provisions contained in the preceding Article, the Judge in furtherance of his judgement may decide its confirmation or revokation.

Article 66

1. If an action derivates from the relationship which brought about the issuance or the transmission of the bill of exchange, the

same shall subsist in spite of the issuance or the transmission of the bill of exchange, provided that it is proved that there has been no substitution.

2. Such action can only be exercised after having ascertained with the protest the lack of acceptance or the non payment.

3. The bearer can only exercise the causal action by offering the debtor the returning of the bill of exchange and depositing it with record-office of the competent Judge, provided that the necessary formalities to retain the actions of recourse to which the debtor might be entitled to, are fulfilled.

Article 67

Should the bearer lose the action against the liable persons, and have no causal action against them, he may proceed against the drawer or the acceptor or the endorser for the amount they had unlawfully profited to his detriment.

Article 68

1. The protest must be drawn up with only one original deed by a Notary Public or by a Law Officer.

2. In the municipal areas in which there is no Notary Public or Law Officer the protest may be drawn by the Municipal Secretary.

3. No witnesses are required to be present for the drawing up of the protest.

Article 69

1. A protest can be made with a separate deed or be entered on either the bill of exchange or parts of a set, its copy, or on its allonge. The allonge can also be added by a Notary or by a Law Officer or by a Municipal Secretary who, in any case, must affix their seal on the conjunction line of the sheet.

2. If the protest is made with a separate deed, whoever draws it must note it on either the bill of exchange, on its parts of a set, on its copy or on the allonge, unless the protest is made without the possession of the bill itself.

Article 70

1. The protest must be made in the places and against the persons indicated in Article 44, even if the persons are not present.

2. If the domicile of the liable parties cannot be found, the protest can be served in any locality in the place of payment, at the choice of the server.

3. The invalidity of the persons against whom the protest is set up does not discharge them from the obligations of the bill, except those mentioned in the last paragraph of Article 51.

4. If the person to whom the bill of exchange is to be presented is dead, the protest must, all the same, be drawn up against his name, according to the preceding provisions.

Article 71

1. The protest must contain:

- a) the date,
- b) the name of the requesting party,
- c) an indication of the places in which it is done, and a mention of the shortage of address in the cases provided in Article 44,
- d) the object of the request made to them, the name of persons and their answers or why they had not answered,
- e) the signature of the Notary Public, the Law Officer or the Municipal Secretary.

2. The protest on a separate deed must contain the transcription of the bill of exchange.

3. For more than one bill of exchange to be paid by the same person in the time and place, the creditor may draw the protest on only one single deed.

Article 72

1. Unless the drawer has stipulated the obligation of protest on the bill, the protest can be substituted, if the bearer agrees, by a statement of refusal of acceptance or of payment written and dated on the bill of exchange, or on the allonge, or on a separate deed, and signed by the drawer.

2. For such a statement to have the effects of the protest it should be registered in the same manner as the protest.

3. In the cases contemplated in the first paragraph, an endorsement without date is supposed to have been made prior to the statement.

Article 73

1. The Notary Public, the Law Officer and the Municipal Secretary must keep record of all the protest drawn by them, indicating the requirements of the preceding Article, daily in order of date.

2. The original copy of the protest on separate deed must be handed over to the bearer of the bill of exchange.

CHAPTER VIII

INTERVENTION FOR HONOUR

Section I

General Provisions

Article 74

1. The drawer, an endorser, or a person giving an «aval» may specify a person who is to accept or pay in case of need.

2. A bill of exchange may, subject as hereinafter mentioned, be accepted or paid by a person who intervenes for the honour of any debtor against whom a right of recourse exists.

3. The person intervening may be a third party, even the drawee, or, save the acceptor, a party already liable on the bill of exchange.

4. The person intervening is bound to give, within two business days, notice of his intervention to the party for whose honour he has intervened. In default, he is responsible for the injury, if any, due to his negligence, but the damages shall not exceed the amount of the bill of exchange.

Section II

Acceptance by Intervention (For Honour)

Article 75

1. There may be acceptance by intervention in all cases where the holder has a right of recourse before maturity on a bill which is capable of acceptance.

2. When the bill of exchange indicates a person who is designated to accept or pay it in case of need at the place of payment, the holder may not exercise his rights or recourse before maturity against the person naming such a referee in case of need and against subsequent signatories, unless he has presented the bill of exchange to the referee in case of need and until, if acceptance is refused by the latter, this refusal has been authenticated by a protest.

3. In other cases of intervention the holder may refuse an acceptance by intervention. Nevertheless, if he allows it, he loses his rights or recourse before maturity against the person on whose behalf such acceptance was given and against subsequent signatures.

Article 76

Acceptance by intervention is specified on the bill of exchange. It is signed by the person intervening. It mentions the person for whose honour it has been given and, in default of such mention, the acceptance is deemed to have been given for the honour of the drawer.

Article 77

1. The acceptor by intervention is liable to the holder and to the endorsers, subsequent to the party for whose honour he intervened, in the same manner as such party.

2. Notwithstanding an acceptance by intervention, the party for whose honour it has been given and the parties liable to him may require the holder, in exchange for payment of the sum mentioned in Article 55, to deliver the bill, the protest and a receipted account, if any.

3. If the bill of exchange is not presented for acceptance not later than the day following the last day allowed for drawing up the protest for non-payment, the obligation of the acceptor by intervention is extinguished.

Section III

Payment by Intervention

Article 78

1. Payment by intervention may take place in all cases where, either at maturity or before maturity, the holder has a right of recourse on the bill.

2. Payment must include the whole amount payable by the party for whose honour it is made.

3. It must be made at the latest on the day following the last day allowed for drawing up the protest for non-payment.

4. The payment by intervention must result from the protest; and if this has already been drawn up, the Law Officer who is drawing it must note it down in furtherance of the protest. The expenses of the protest are subject to reimbursement even if the drawer has written «retour sans frais» on the bill of exchange.

Article 79

1. If a bill of exchange has been accepted by a person intervening who is domiciled in the place of payment, or if persons domiciled there have been named as referees in case of need, the holder must present the bill to all these persons and, if necessary, have a protest for non-payment drawn up at the latest on the day following the last day allowed for drawing up the protest.

2. In default of protest within this limit of time, the party who has named the referee in case of need, or whose account the bill has been accepted, and the subsequent endorsers, are discharged.

Article 80

The holder who refuses payment by intervention loses his right of recourse against any persons who would have been discharged thereby.

Article 81

1. Payment by intervention must be authenticated by a receipt given on the bill of exchange mentioning the person for whose honour payment has been made. In default of such mention, payment is deemed to have been made for the honour of the drawer.
2. The bill of exchange and the protest, if any, must be given up to the person paying by intervention.

Article 82

1. The person paying by intervention acquires the rights arising out of the bill of exchange against the party for whose honour he has paid and against persons who are liable to the latter on the bill of exchange. Nevertheless, he cannot re-endorse the bill of exchange.
2. Endorsers subsequent to the party for whose honour payment has been made are discharged.
3. In case of competition for payment by intervention, the payment which effects the greater number of releases has the preference. Any person who, with a knowledge of the facts, intervenes in a manner contrary to this rule, loses his rights of recourse against those who would have been discharged.

CHAPTER IX

PARTS OF A SET AND COPIES

Section I

Parts of a Set

Article 83

1. A bill of exchange can be drawn in a set of two or more identical parts.
2. These parts must be numbered in the body of the instrument itself; in default, each part is considered as a separate bill of exchange.

3. Every holder of a bill of exchange which does not specify that it has been drawn as a sole bill may, at his own expenses, require the delivery of two or more parts. For this purpose he must apply to his immediate endorser, who is bound to assist him in proceeding against his own endorser, and so on in the series until the drawer is reached. The endorsers are bound to reproduce their endorsements on the new parts of the set.

Article 84

1. Payment made on one part of the set operates as a discharge even though there is no stipulation that this payment annuls the effect of the other parts. Nevertheless, the drawee, is liable on each accepted part which he has not recovered.

2. An endorser who has transferred parts of a set to different persons, as well as subsequent endorsers, are liable on all the parts bearing their signature which have not been restored.

Article 85

1. A party who has sent one part for acceptance must indicate on the other parts the name of the person in whose hands this part is to be found. That person is bound to give it up to the Lawful holder of another part.

2. If he refuses, the holder cannot exercise his right of recourse until he has had a protest drawn up specifying:

- a) that the part sent for acceptance has not been given up to him on his demand.
- b) that acceptance or payment could not be obtained on another of the parts.

Section II

Copies

Article 86

1. Every holder of a bill of exchange has the right to make copies of it.

2. A copy must reproduce the original exactly, with the endorsements and all other statements to be found therein. It must specify where the copy ends. It may be endorsed and guaranteed by «aval» in the same manner and with the same effects as the original.

Article 87

1. A copy must specify the person in possession of the original instrument. The latter is bound to hand over the said instrument to the lawful holder of the copy.

2. If he refuses, the holder may not exercise his right for recourse against the persons who have endorsed the copy or guaranteed it by «aval» until he has had a protest drawn up specifying that the original has not been given up to him on his demand.

3. Where the original instrument, after the last endorsement before the making of the copy, contains a clause «commencing from here an endorsement is only valid if made on the copy» or some equivalent formula, a subsequent endorsement on the original is null and void.

CHAPTER X

ALTERATIONS

Article 88

1. In case of alteration of the text of a bill of exchange, 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.

2. If it is not shown in the instrument or it is impossible to show that the signature has been affixed before or after, it is presumed that it has been affixed before.

CHAPTER XI

CANCELLATION

Article 89

1. In case of loss, abstraction or destruction, the bearer of the bill of exchange can sue the drawee and ask for the cancellation of

the instrument with recourse to the President of the Tribunal of the place where the bill exchange is payable or of the place where he has his domicile.

2. The recourse must indicate the essential features of the bill of exchange and, if it is the case of a blank bill of exchange, those sufficient to identify it.

3. The President of the Tribunal, having made the proper investigation to the truthfulness of the recourse and the rights of the bearer, issues as soon as possible a Decree in which, mentioning the data of the bill of exchange, decrees its cancellation and authorizes its payment after thirty days from the date of its publication in the Official Bulletin of the Republic, if the bill of exchange has already expired or is at sight, or on maturity if it has not yet matured, provided that in the meantime no opposition is made on the part of the holder.

4. The decree must be, on the initiative of the complaint, notified to the drawee and published in the Official Bulletin of the Republic.

5. In spite of the suit, the payment of the bill of exchange to the holder prior to notification of the Decree, discharges the debtor.

Article 90

The opposition of the holder must in any case be brought with a deed to be notified to the complaint and to the drawee of the bill of exchange to appear before the Tribunal at the place of payment.

Article 91

During the time period fixed by Article 89 the complaint may perform all those acts intended to preserve his rights, and in the case of bills of exchange at sight or already expired, or matured he has the right to ask for payment against security or to deposit the sum of money with the judiciary authority.

Article 92

1. After the expiration of the time-limit indicated in Article 89, without opposition, or if the opposition is definitely overruled, the lost bill of exchange has no validity whatsoever. The person who obtained the cancellation may, upon submitting the Decree, or

a certificate of the record-office of the Tribunal showing that no opposition has been presented, or upon submitting the definite sentence against the opposition, ask for its payment, or in the case of a bill of exchange in blank of yet to mature, to request a part of a set.

2. On the matured bill of exchange or at sight declared not valid, an interest in the amount of rate indicated in Articles 55 and 56, is charged, unless the sum has been deposited according to the provisions of Article 48 on behalf of the person in whose favour the cancellation is granted or the sentence is pronounced.

Article 93

The cancellation extinguishes all rights deriving from the cancelled bill of exchange, but does not impair, however, the possible reason of the holder to recourse against whoever obtained the cancellation.

CHAPTER XII

LIMITATION OF ACTIONS

Article 94

1. All actions arising out of a bill of exchange against the acceptor are barred after three years, reckoned from the date of maturity.

2. Actions by the holder against the endorsers and against the drawer are barred after one year from the date of a protest drawn up within proper time, or from the date of maturity where is a stipulation «retour sans frais».

3. Action by endorsers against each other and against the drawer are barred after six months, reckoned from the day when the endorser took up and paid the bill or from the day when he himself was sued.

4. The action for reimbursement of expenses is barred after one year reckoned from the day of the loss of the bill of exchange action.

Article 95

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

CHAPTER XIII

FINAL PROVISIONS

Article 96

1. Payment of a bill of exchange which falls due on a legal holiday (jour ferie legal) cannot be demanded until the next business day. So, too, all other proceedings relating to a bill of exchange, in particular presentment for acceptance and protest, can only be taken on a business day.

2. Where any of these proceedings must be taken within a certain limit of time the last day of which is a legal holiday (jour ferie legal), the limit of time is extended until the first business day following the expiration of that time. Intermediate holidays (jours feries) are included in computing limits of time.

Article 97

Legal or contractual limits of time do not include the day on which the period commences.

Article 98

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

Article 99

To the effects of these provisions the term «domicile» is understood to mean the place of residence, and the term «place of payment» to mean the entire area of the municipality.

TITLE II

PROMISSORY NOTES

Article 100

1. A promissory note contains:
 - a) the term «promissory note» inserted in the body of the instrument and expressed in the language employed in drawing up the instrument,

- b) an unconditional promise to pay a determinate sum of money,
- c) a statement of the time of payment,
- d) a statement of the place where payment is to be made,
- e) the name of the person to whom or to whose order the payment is to be made,
- f) a statement of the date and of the place where the promissory note is issued,
- g) the signature of the person who issues the instrument (maker).

2. The promissory note may also be called «I Owe You» or «Bill of exchange».

Article 101

1. An instrument in which any of the requirements mentioned in the preceding Article are wanting is invalid as a promissory note except in the cases specified in the following paragraphs.

2. A promissory note in which the time of payment is not specified is deemed to be payable at sight.

3. In default of special mention, the place where the instrument is made is deemed to be the place of payment and at the same time the place of the domicile of the maker.

4. A promissory note which does not mention the place of its issue is deemed to have been in the place mentioned beside the name of the maker.

Article 102

1. The following provisions relating to bills of exchange apply to promissory notes so far as they are not inconsistent with the nature of these instruments, viz:

- a) Endorsement,
- b) Time of Payment,
- c) Payment,
- d) Recourse in case of non-payment,
- e) Payment by intervention,
- f) Copies,

- g) Alterations,
- h) Limitation of actions,
- i) Holidays computation of limits of time and prohibition of days of grace.

2. The following provisions are also applicable to a promissory note: the provisions concerning a bill of exchange payable at the address of a third party or in locality other than that of the domicile of the drawee; stipulation for interest; discrepancies as regards the sum payable; the consequences of signature under the conditions mentioned in Article 7; the consequences of signature by a person who acts without authority or who exceeds his authority; and provision concerning a bill of exchange in blank.

3. The following provisions are also applicable to a promissory note: provisions relating to guarantee by «aval»; in the case provided for in Article 36, last paragraph, if the «aval» does not specify on whose behalf it has been given, it is deemed to have been given on behalf of the maker of the promissory note.

4. The provisions relating to the cancellation and those contained in Article 99 are also applicable to the promissory note.

Article 103

1. The maker of a promissory note is bound in the same manner as an acceptor of a bill of exchange.

2. Promissory notes payable at a certain time after sight must be presented for the visa of the maker within the limits of time fixed by Article 28. The limit of time runs from the date of the visa signed by the maker on the note. The refusal of the maker to give his visa with the date thereon must be authenticated by a protest the date of which marks the commencement of the period of time after sight.

TITLE III

COMMON PROVISIONS

Article 104

1. The Law on Stamp is not to comply with the validity of bill of exchange and of the promissory note, including those at

sight and at a certain time after sight. They do not, however, have the validity of executory instruments if they are not regularly stamped at the origin or in the time prescribed by the Law.

2. The bearer cannot exercise the rights inherent to the bill of exchange if he did not pay the stamp-duty and relative penalties.

3. The invalidity as an executory instrument must be detected and pronounced by a Judge or by an ex-officio.

Article 105

Whenever the bill of exchange payable at sight or at a certain time after sight, or the promissory note payable at sight or at a certain time after sight, bears the indication of interests, the gradual stamp-duty is due, on the capital and on the amount of interests as well, and must be computed on the basis of the rate indicated on the instrument and according to the period of validity of the instrument itself in respect to the stamp. Interests can, in no case, be computed for a period higher than ten months.



«Annex B»

TITLE I

CHEQUES

CHAPTER I

THE DRAWING AND THE FORM OF A CHEQUE

Article 1

A cheque contains:

- a) the term «cheque» inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;
- b) an unconditional order to pay a determinate sum of money;
- c) the name of the person who is to pay (drawee);
- d) a statement of the place where the payment is to be made;
- e) a statement of the date when, and the place where, the cheque is drawn;
- f) the signature of the person who draws the cheque (drawer).

Article 2

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

2. 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.

3. 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.

4. 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

1. A cheque is drawn on a banker. However, an instrument issued or payable outside the territory of the Country is valid as a cheque, although it is drawn on a person who is not a banker.

2. A cheque must be drawn on a banker holding funds proposal of the drawer and in conformity with an agreement, expressed 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

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

2. Any statement of certification, confirmation, vise, and any other equivalent expression, written on the instrument and signed by the drawee, has the effect of ascertaining the availability of funds and the prevention of their withdrawal on the part of the drawer before the expiry of the time limits.

Article 5

1. A cheque may be payable:

- a) to a specified person, with or without the express clause «to order», or
- b) to a specified person, with the words «not to order» or equivalent words;
- c) to bearer.

2. A cheque may be payable to a specified person with the words «to bearer», or any other equivalent words, is deemed to be a cheque to bearer.

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

Article 6

1. A cheque may be drawn to the drawer's own order.
2. A cheque may be drawn for account of a third person.
3. 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

1. Where the sum payable on 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.

2. 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

A signature must indicate the name or the firm of the person undertaking the obligation.

Article 12

The emancipated underage not authorised to stay in business, and the disabled persons, do not enter into any obligation if their signature is not accompanied by that of their guardian with the clause «for assistance» or other similar expression. In default of such clause or of equivalente one, the guardian is personally bound.

Article 13

The parent or the guardian not authorised to practice business on behalf of the underage or of the disabled person can enter obligations on their names behind an authorization of the competent Tribunal.

Article 14

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, he has same rights as the person for whom he purported to act. The same rule applies to a representative who has exceeded his powers.

Article 15

The power to enter into obligations in the name and on behalf of third parties includes also the power to issue and endorse cheques, unless the representation deed states otherwise.

Article 16

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

CHAPTER II

NEGOTIATION

Article 17

1. A cheque made available to a specified person, with or without the express clause «to order» may be transferred by means of endorsement.

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

3. A cheque be endorsed even to the drawer or to any other party to the cheque.
endorsement in blank.

Article 18

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

2. A partial endorsement is null and void.

3. An endorsement by the drawee is also null and void.

4. An endorsement to the «bearer» is equivalent to an endorsement inblank.

5. 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 19

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

2. 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 20

1. An endorsement transfers all the rights arising out of a cheque.
2. If the endorsement is in blank, the holder may:
 - a) fill up the blank either with his own name or with the name of some other person;
 - b) re-endorse the cheque in blank or to other person;
 - c) transfer the cheque to a third person without filling up the blank and without endorsing it.

Article 21

1. In the absence of any contrary stipulation, the endorser guarantees payment.
2. He may prohibit any further endorsement; in this case he gives no guarantee to the persons to whom the cheque is subsequently endorsed.

Article 22

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 endorsement 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 23

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 24

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 rights in the man-

ner 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 in bad faith or unless in acquiring it he has been guilty of gross negligence.

Article 25

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 holder.

Article 26

1. When an endorsement contains the statement «value in collection», «for collection», «by 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.

2. In this case the parties liable can only set up against the holder defences which could be set up against the endorser.

3. 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 27

1. 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.

2. 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

A V A L S

Article 28

1. Payment of a cheque may be guaranteed by an «aval» as to the whole or part of its amount.

2. This guarantee may be given by a third person other than the drawee, or even by a person who has signed the cheque.

Article 29

1. An «aval» is given either on the cheque itself or on an allonge.

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

3. 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.

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

Article 30

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

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

3. 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 letter on the cheque.

CHAPTER IV

PRESENTMENT AND PAYMENT

Article 31

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

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

Article 32

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

2. A cheque issued in a country other than that in which it is payable must be presented within a period of thirty 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.

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

Article 33

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 34

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

Article 35

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

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

Article 36

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 37

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

2. The holder may not refuse partial payment.
3. 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 38

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

Article 39

1. 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 presentment or on the day of payment.

2. 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.

3. 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).

4. 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 40

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

3. The crossing is general if it consists of the two lines only.
2. A crossing takes the form of two parallel lines drawn on the face of the cheque. The crossing may be general or special, or if between the lines the term «banker» or some equivalent expression is inserted; it is special if the name of a banker is written between the lines.
4. A general crossing may be converted into a special crossing, but a special crossing may not be converted into a general crossing.
5. The obliteration either of a crossing or of name of the banker shall be regarded as not having taken place.

Article 41

1. A cheque which is crossed generally can be paid by the drawee only to a banker or to a customer of the drawee.
2. 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.
3. 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.
4. A cheque bearing several special crossing 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.
5. The drawee or banker who fails to observe the above provisions is liable for resulting up to the amount of the cheque.

Article 42

1. 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» or a similar expression.
2. 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 settlements). Settlement by book-entry is equivalent to payment.

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

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

5. The drawee is not bound to credit the cheque but to some of his customers.

Article 43

1. The cheque issued with the clause «not transferable», can only be paid to the payee or, upon his request, credited to his account. The payee can endorse the cheque only to a banker for collection; and the latter can no longer endorse it.

2. The endorsement made in spite of his prohibition shall be disregarded. The cancellation of the clause shall be deemed not to have taken place. Whoever pays a «not transferable» cheque to a person other than to the payee or the banker to whom it is endorsed for collection, is responsible for the payment.

3. The clause «not transferable» can also be affixed by the banker, upon request of the customer.

4. The same clause can be affixed by an endorser for the same effects.

5. The provisions of the preceding paragraph are only applicable to cheques payable within the territory of the Republic.

Article 44

The drawer of the cheque can, upon presentment, condition payment to the existence on the instrument of two authentic signatures of the payee (Travellers' cheque).

CHAPTER VI

RECOURSE FOR NON-PAYMENT

Article 45

1. 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:

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

2. The holder maintains his rights against the drawer, although the cheque has not been presented in due time or the protest, or the equivalent statement, has not been drawn up. If, after the lapse of the time-limit for presentment, the availability of the sum is lacking on the account of the drawee, the holder forfeits his rights totally or limitedly to the sum lacking.

Article 46

1. The protest or the equivalent statement must be drawn up before the expiration of the limit of time for presentment.

2. 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 47

1. 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 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.

2. 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 limits of time to his «avaliseur»

3. 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.

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

5. 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.

6. 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 48

1. The drawer, an endorser, or an «avaliseur» may, by the stipulation «retour sans frais», «sans protest», 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.

2. This stipulation, without prejudice to the last paragraph of article 45, does not release the holder from presenting the cheque within the prescribed limit of time, or from giving the requisite notice. 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.

3. 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 cost of the protest or equivalent declaration, if drawn up or made, may be recovered from all the persons who have signed the cheque.

Article 49

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

2. 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.

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

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

Article 50

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

- a) the unpaid amount of the cheque;
- b) interest at the legal rate as from the day of presentment;
- c) the expenses of the protest or equivalent declaration, and of the notices given as well other expenses.

Article 51

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

- a) the entire sum which he has paid;
- b) interest on the said sum calculated at the legal rate as from the day on which he made payment;
- c) any expenses which he has incurred.

Article 52

1. 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.

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

Article 53

1. Should the presentment of the cheque or the drawing up of the protest or the making of equivalent declaration within the

prescribed limits of time be prevented by an insurmountable obstacle (legal prohibition «prescription legal» by any State or other case of vis major), these limits of time shall be extended.

2. 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 47 shall apply.

3. 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.

4. 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.

5. 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.

Article 54

The bill of exchange action does not take place amongst several liable persons who hold similar position in the cheque; their relation is regulated by the provisions pertaining to the joint obligations.

Article 55

1. According to the provisions of article 50 and 51, the cheque has the effects of an executory title for the capital and accessories.

2. A cheque issued abroad has the same effects as long as it is recognized by the Laws of the place where the cheque has been issued.

Article 56

The opposition does not suspend the execution; but the President of the competent Tribunal, upon recourse of the opponent

party disowning his signature or the representation or pleading serious and well-ground reasons, can, with a motivated provisions not subject to appeal, and after having examined the documents submitted, wholly or partially suspend the executory procedure against suitable caution money.

Article 57

1. The debtor can introduce in the judgement only the exceptions of avoidance of the cheque, in accordance with provisions of Article 2, and those not forbidden by Article 25.

2. If the exceptions required a long investigation, the judge, upon request of the creditor, shall pass a temporary judgement, with or without caution money.

3. He can also, upon request of the debtor, suspend the execution of the judgement for serious reasons, with caution money, if he retains it necessary.

4. Should the suspension be already granted by the provisions contained in the preceding Article, the judge, in furtherance of his judgement, decides the confirmation or the repealing of the provisions.

Article 58

1. If from the relationship which brought about the issuance or the transmission of the cheque, derivates an action, the same subsists in spite of the issuance or the transmission of the instrument, unless it can be proved that there has been novation.

2. The bearer can only exercise the casual action by offering to the debtor the return of the cheque and depositing it with the record-office of the competent judge, after having fulfilled the necessary formalities to retain for the debtor himself the actions of recourse to which he might be entitled.

Article 59

1. Should the bearer lose the bill of exchange action against all liable persons and not have the causal actions against the same, he can proceed against the drawer for not having made funds available or for having unlawfully profitted to his detriment.

2. The same action can be exercised, under the above mentioned conditions, against the endorsers.

Article 60

1. The protest must be drawn up with a unique deed by a Notary Public or by a Law Officer.
2. In the municipal areas in which there is no Notary Public or a Law Officer the protest can be drawn up by the Secretary of the municipality.
3. The presence of witnesses in drawing up the protest is not deemed necessary.

Article 61

1. The protest can be drawn up with a separate deed or be written on the cheque, on its duplicate, on the copy, or on its allonge. This sheet can also be added by a Notary Public or by a Law Officer or by a Secretary of a municipality who, in any event, must affix their seal on the conjunction line of the sheet.
2. If the protest is drawn up with a separate deed, whoever takes the action must mention it on the cheque, on its duplicate, on the copy, or on the allonge, unless it has been necessary to go on with the protest although lacking the possession of the instrument.

Article 62

1. The protest must be drawn up in the place of payment, against the drawee or the third party indicated for the payment, even if they are not present.
2. If the domicile of the said persons cannot be found, the protest can be drawn up in any locality in the place of payment, at the choice of the server.
3. The inability of the drawee or of the third party indicated in Article 8 does not exempt them from the obligation of the protest being drawn up against them; unless the drawee has become bankrupt, in which case the presentment of the sentence stating his bankruptcy is enough to act as course.
4. If the drawee of the third party is deceased, the protest is drawn up all the same in his name, in accordance with the preceding rules and regulations.

Article 63

1. A protest must contain:
 - a) the date;
 - b) the name of the requesting party;
 - c) the indication of the place where it is drawn up and a mention of the research carried out;
 - d) the object of the request, the name of the requested person, and the replies received or the reasons for which no reply has been received.
 - e) the signature of the Notary Public, or of the Law Officer or of the Secretary of the municipality.
2. A protest on separate deed must contain the transcription of the cheque.
3. For more than one cheque to be paid by the same person in the same place, the creditor can draw up the protest with only one deed.

Article 64

1. The protest, in accordance with the provisions of Article 45, can be substituted, if the bearer agrees to it, by a statement of non-payment, written and dated on the instrument or on the allonge and signed by the drawee.
2. Such a statement, in order to have the effects of the protest, must be registered within the same time-limits.

Article 65

In the cases contemplated in the preceding article the endorsement without date is deemed to have been made before the statement.

CHAPTER VII

PART OF A SET

Article 66

With the exception of the bearer cheques, any cheque issued in one country and payable in another or payable in a separate part

overseas of the same country or viceversa, or issued and payable in the same or different part of 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 67

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

2. 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 68

1. 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.

2. When it is not shown in the instrument, or it is not proved, that the signature has been affixed before or after, it is deemed that it has been affixed before.

CHAPTER IX

CANCELLATION

Article 69

1. In case of loss, abstraction or destruction the bearer of the cheque can sue the drawee and request the cancellation with recourse to the President of the Tribunal of the place in which the cheque is payable or in which the requesting party has his domicile.

2. The President must indicate the essential features of the cheque.

3. The President of the Tribunal, whereas the proper controls on the truth of the facts and on the rights of the bearer, issues as soon as possible a Decree in which, mentioning the date of the cheque, decrees its cancellation and authorizes its payment after fifteen days from the date of its publication in the Official Bulletin, provided that in the meantime no opposition has been made on the part of the holder.

4. The Decree must be, on the initiative of the suer notified to the drawee and published in the Official Bulletin of the Republic.

5. In spite of the suit, the payment of the cheque to the holder prior to the notification of the Decree, discharges the debtor.

Article 70

The opposition of the bearer must, in any case, be reckoned with a deed to be notified to the suer, to the drawer or to the drawee, to appear before the tribunal of the place of payment.

Article 71

During the period of time established in article 69, the suer has the right to carry out all those acts intended to keep his rights and has the faculty of asking for the payment of the cheque through caution money or to request the judiciary deposit of the sum.

Article 72

After the expiry of the time-limit indicated in article 69, without opposition or with a rejected opposition with absolute sentence, the lost cheque loses all validity. Whoever gets the cancellation can, after submitting the Decree and of a certificate of the record office of the Tribunal showing that no opposition has been put in, and upon submission of the absolute sentence which rejects the opposition, ask for the payment.

Article 73

In case of a cheque issued with the clause «not transferable» there shall be no cancellation; but the payee has the right of obtaining at his own expenses a duplicate copy reporting the loss.

the destruction or the abstraction to the drawee and to the drawer

Article 74

The cancellation extinguishes all rights deriving from the cheque declared non-effective but does not affect the possible reasons of the bearer against whoever obtained the cancellation.

CHAPTER X

LIMITATION OF ACTIONS

Article 75

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

2. 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.

3. The enrichment action is barred after one year as of the day of the loss of the action deriving from the instrument.

Article 76

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

CHAPTER XI FINAL PROVISIONS

Article 77

In the present Law the word «banker» includes the persons or institutions assimilated by the law to bankers.

Article 78

1. The presentment or protest of a cheque may only take place on a business day.

2. When the last of the limit of time prescribed by the Law for performing any act relating to the cheque, and particularly for presentment or for the drawing up of a protest or of 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 79

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

Article 80

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

Article 81

For the purpose of this Law, the word «domicile» means the entire municipal area.

TITLE II

THE BANKER'S DRAFT

Article 82

1. The banker's draft is an instrument of credit to order, issued by a Credit institution authorized for this purpose by the Credit and Savings Committee, in accordance with the Banking Law, for amounts available at the moment of issuance, and is payable at sight at any address indicated by the issuer.

2. The authorized institution shall hold, in accordance with the Law, a safety caution on which the holders of the said instruments have special privilege.

Article 83

1. A banker's draft must contain:
 - a) the term «banker's draft» inserted in the body of the instrument;
 - b) an unconditional promise to pay at sight a determinate sum of money;
 - c) the name of the payee;
 - d) a statement of the date and of the place where the banker's draft is made;
 - e) the name of the payee;
 - f) the signature of the issuing institution.
2. An instrument in which some of the above mentioned features are wanting is not valid as Banker's draft.
3. The extent of such caution is determined on a yearly basis by the Credit and Savings Committee, in amounts proportional to the sum of cheques issued by each institution and circulating at December 31, or each year.

Article 84

1. The holder is barred from the action of recourse if he does not present the instrument for payment within 30 days from the issuance date.
2. The action against the issuer is barred after three years from the issuance date.
3. An endorsement in favour of the issuer discharges the draft.

Article 85

1. In so far as they are not inconsistent with the very nature of the banker's draft, unless contrary provision is provided for in the present Law, the provisions of the bill of exchange pertaining to the endorsement, the payment, the protest, the recourse, the limitation of actions, those relating to instruments with forged signatures or with signatures of incapable persons binding themselves, and subscription; and those connected with crossed cheques, cheques to be credited, not transferable cheques and traveller's cheques, are applicable to the Banker's Draft.

2. The provisions of articles 69 and 74 shall be applied for the cancellation of the banker's draft, with the following modifications:

- a) Recourse must be made to the President of the Tribunal of the place where there is an office of the issuing institution or of the place in which the suer has his domicile.
- b) Notification of the cancellation Decree must be made to one of the nearest offices of the Institution which, at the expenses of the suer, give immediate notice to all offices where the draft is payable. Any opposition must be drawn up with a deed to be served to the suer and the representative of the Institution, before the Tribunal which issue the Decree.
- c) The Institution which pays for banker's draft to bearer before the notification Decree of the loss is not held responsible. Likewise the institution is not held responsible for paying for banker's draft at other institutions without knowledge of the Notification Decree.
- d) In case of loss, destruction or abstraction of a banker's draft issued with the clause «not transferable» the cancellation procedure shall not be applied; but, the payee has the right to obtain payment for the banker's draft from the Branch Office where the declaration has ben made twenty days after the declaration.



TITLE III

COMMON PROVISIONS

CHAPTER I

PENAL PROVISIONS

Article 86

1. The drawing of a worthless cheque is punished according to the provisions contained in article 498 of the Penal Code.
2. The penalties referred to in the said Article are reduced by half if the offender pays the sum due to the drawee, before, or on the day of presentment of the cheque.
3. An offence due to a minor error, involving the circumstances of the previous paragraph is not punishable.

Article 87

1. Unless otherwise provided in any special provision, the issue of Banker's draft by an authorized institution or by an Institution from which authorization has been withdrawn, is punishable with a fine ranging between So. Sh. 10,000 and 100,000.
2. The lack of authorization does not impair the good-faith payee the right of getting paid the Issuing Institution and of drawing up possible recourse actions.

CHAPTER II

FISCAL PROVISIONS

Article 88

1. The validity of the banker's draft is not subordinated to the observance of the Law on Stamps. It has, however, no validity as executory instrument, if it has not been stamped within the time limits prescribed by the Law.

2. The holder cannot exercise the rights of exchange in the instrument if he does not pay the stamps due and the relating penalties.

3. The invalidity of a cheque as an executory instrument must be detected and declared by a judge, even ex officio.

Article 89

The bearer of a banker's draft in order to exercise his rights of recourse must take the irregular cheque to the competent Fiscal Office to regulate it by paying the stamp duties within thirty days from the date of presentment of the cheque for payment.

Article 90

1. For every mention written on the banker's draft, in accordance with the provisions of article 4 (valid only to ascertain the availability of funds), independently from the stamps due on the banker's draft, another stamp duty of So. Sh. 1 for every So. Sh. 10,000 or fraction thereof, is due on the amount of the cheque.

2. Tax is paid by applying stamps on to the instrument and nullified by the date and signature of the drawer.

Article 91

Unless otherwise stated by law, whensoever the date indicated as the date of issue of the banker's draft is subsequent to that of effective issue or differs from it more than four days, the gradual taxation is applied to the banker's draft, unless it is justified by the time limit necessary to reach the destination or by the impossibility of presentment.