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# Building A Universal Payments Law? The UNCITRAL Model Law on International Credit Transfers

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**I**n June 1991 the United Nations Commission for International Trade Law (UNCITRAL) had hoped to adopt a Model Law on International Credit Transfers. However, owing to diverging views on a number of crucial issues the governmental delegations present at the Vienna session could discuss and amend the text only up to and including Article 15. A final version of the Model Law cannot therefore be expected before next year. The current draft is reproduced at the end of this article.

The Model Law, prepared by the UNCITRAL Working Group on International

Payments, is probably the most thorough law reform initiative regarding payments currently under discussion in an international framework. The Model Law is designed to produce a comprehensive body of rules to govern relations between parties to funds transfer transactions. These rules are not intended to be part of an international convention but will be addressed to legislative bodies for adoption as statutory law. As discussed in the Working Group, a Model Law would be more flexible than a convention because countries would be able to take those parts of it which they found useful and adapt them to their needs.<sup>1</sup>

In 1986 UNCITRAL decided to begin preparing model rules which were at first limited to electronic funds transfers.<sup>2</sup> Later, the draft Model Law was expanded to cover any form of credit transfer as long as such a transfer was "international," which, under Article 1 of the present draft, applies to "a credit transfer where a sending bank and its receiving bank are in different States."<sup>3</sup> A "credit transfer" (as distinguished from a "debit transfer") is understood to include "one or more payment orders, beginning with the originator's payment order, made for the purpose of placing funds at the disposal of a beneficiary." "Payment order" or "beneficiary" are also defined in the Model Law.

Some of the legal issues that gave rise to controversial discussions<sup>4</sup> in the UNCITRAL sessions are: Payment to a receiving bank via netting systems (art. 5 (b)(iv)), the concept of "acceptance" (art. 6 and art. 8), the concept of a "money back guarantee" (art. 13), liability (art. 16), and the moment of completion of credit transfers and dis-

charge of underlying obligation (art. 17).

As can be seen from the reports on the sessions of the UNCITRAL Working Group, the main points of controversy seem to stem from the fact that the Model Law: (1) Tries to encompass both paper-based payment orders for small amounts as well as large-volume payment orders processed by computerised high-speed payment systems; (2) would be applicable to both inter-bank payment orders for high amounts as well as small "consumer" payments; and (3) does not seem to provide for the fact that the technical level of payment order processing varies greatly from country to country. In addition, some participants advocate the principle of contractual freedom to the greatest possible extent, whereas others favour the introduction of mandatory "public policy" rules in the context of private contracts. Moreover, there does not seem to be a real consensus on which of the market participants should be protected by the Model Law, small and medium-sized corporations, payment system operators and/or citizens of countries that do not have highly technical payment systems?

UNCITRAL's international undertaking paralleled the United States' domestic project to incorporate a new article—4-A "Funds Transfers"—in the Uniform Commercial Code (UCC). In 1989, after four years of intense preparatory work that involved a wide array of representative market participants, the official text of Article 4-A was finalised by the National Conference of Commissioners on Uniform State Laws and the American Law Institute and subsequently submitted to the individual states for adoption.<sup>5</sup>

Article 4-A has, to a certain degree, had an impact on UNCITRAL's Model Law. On the one hand, the US legislative initiative had begun earlier and was always "ahead" of the discussions at UNCITRAL; on the other hand, both sets of rules address similar problems and have resulted from the desire to eliminate the uncertainties that exist with regard to the judicial nature of a funds transfer, and consequently the rights and obligations that are created as soon as more than one national jurisdiction is involved.

UNCITRAL's Model Law and the UCC's Article 4-A are not the first and only initiatives that aim to standardise certain questions arising in the

<sup>1</sup>UNCITRAL, Report of the Working Group on International Payments, 18th Session (A/CN.9/318; 27th January 1989), p. 3.

<sup>2</sup>UNCITRAL, Report of the Working Group on International Payments, 17th Session (A/CN.9/317; 25th August 1988).

<sup>3</sup>UNCITRAL, Report of the Working Group on International Payments, 21st Session (A/CN.9/341; 13th August 1990), p. 25.

<sup>4</sup>The drafting history and comments by the UNCITRAL Secretariat on the Draft Model Law as discussed in June 1991 are published in UNCITRAL Document A/CN.9/346 (15th May 1991); Remarks and Comments by Governments and international organisations are published in UNCITRAL Documents A/CN.9/347 (30th April 1991) and 347 Add.1 (31st May 1991).

<sup>5</sup>On 1st July 1991 UCC Article 4-A (1989) had been put into effect in 12 US States, including New York, where CHIPS and Fedwire are operated. The text is also reflected in the Federal Reserve System's Regulation J, applicable to funds transfers through Fedwire.



context of international payments. Particularly in the light of rapid technological changes in the banking world and the increasing automation of payment transactions, there is an increasing need for information<sup>6</sup> and harmonisation at international level.

A number of initiatives exist with a view to harmonising rules that directly address such issues as payments or funds transfers; other, such as those regarding bankruptcy or consumer protection, have a more indirect effect on payments issues. Not all initiatives are in the form of conventions, i.e., legal clauses contained in treaties concluded between sovereign states. Increasingly, private associations such as the International Chamber of Commerce or the International Law Association or even market participants are actively trying to harmonise statutory or contractual rules that affect the international commercial community. Some of the initiatives—listed in Annex III—have not been as successful as others and have not been adopted as national laws.<sup>7</sup> However, some of the draft conventions have had an important impact insofar as they have served as models for some of the rules laid down in other

conventions or national statutes.

It remains to be seen whether in the area of “payments” at least some of the diverging views of the international legal community and the interests of the banking community with regard to modern high-speed credit transfers can be harmonised by the UNCITRAL Model Law. □

<sup>6</sup>See for instance: Bank for International Settlements: Large Value Funds Transfer Systems in the Group of Ten Countries, Basle, May 1990; Organisation for Economic Co-operation and Development (OECD), Banking and Electronic Funds Transfers, by J.R.S. Revell, Paris 1983; UNCITRAL, Report on the Legal Value of Computer Records, A/CN.9/265, 21st February 1985. See also UNCITRAL, Legal guide on electronic funds transfers, (Vienna, 1987) (published in all the official UN languages); Gutwirth/Joris, Electronic Funds Transfers and the Consumer: The “Soft Law” Approach in the European Community and Australia: I.C.L.Q. 40(1991)265-301.

<sup>7</sup>For a more detailed overview, including a bibliography, see Heinrich, International Initiatives Regarding the Harmonisation of Rules Having an Effect on Payment, Funds Transfers and Bankruptcy, RDAI/IBJL (Paris) (1991)315-327.



# Annexes to UNCITRAL Model Law

## ANNEX I

The text of the Model Law, as reproduced below, contains Articles 1-15 as amended and presented by the Drafting Group in UNCITRAL's 24th session, and Articles 16-18 of the original draft as presented to that session. The entire text will be reproduced in the "Report of the United Nations Commission on International Trade Law on the work of its 24th Session, Vienna, 10-28 June 1991," United Nations Document A/46/17, which will be presented to the United Nations General Assembly in September 1991.

### UNCITRAL Model Law on International Credit Transfers

#### Chapter I. General Provisions

##### Article 1. Sphere of application<sup>1</sup>

- (1) This law applies to credit transfers where any sending bank and its receiving bank are in different States.
- (2) This law applies to other entities that as an ordinary part of their business engage in executing payment orders in the same manner as it applies to banks.
- (3) For the purpose of determining the sphere of application of this law, branches and separate offices of a bank in different States are separate banks.

<sup>1</sup>This law does not deal with issues related to the protection of consumers.

##### Article 2. Definitions

For the purposes of this law:

- (a) "Credit transfer" means one or more payment orders, beginning with the originator's payment order, made for the purpose of placing funds at the disposal of a beneficiary. The term includes any payment order issued by the originator's bank or any intermediary bank intended to carry out the originator's payment order. A payment order issued for the purpose of effecting payment for such an order is considered to be part of a different credit transfer.
- (b) "Payment order" means an unconditional instruction, in any form, by a sender to a receiving bank to place at the disposal of a beneficiary a fixed or determinable amount of money if:
  - (i) the receiving bank is ~~to be~~ reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and
  - (ii) the instruction does not provide that payment is to be made at the request of the beneficiary.

Nothing in this paragraph prevents an instruction from being a payment order merely because it directs the beneficiary's bank to hold, until the beneficiary requests payment, funds for a beneficiary that does not maintain an account with it.

- (c) "Originator" means the issuer of the first payment order in a credit transfer.
- (d) "Beneficiary" means the person designated in the originator's payment order to receive funds as a result of the credit transfer.
- (e) "Sender" means the person who issues a payment order, including the originator and any

sending bank.

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

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

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

(j) "Authentication" means a procedure established by agreement to determine whether a payment order or a revocation of a payment order was issued by the person indicated as the sender.

(k) "Execution period" means the period of one or two days beginning on the first day that a payment order may be executed under article 10(1) and ending on the last day on which it may be executed under that article, on the assumption that it is accepted on receipt.

(l) "Execution," in so far as it applies to a receiving bank other than the beneficiary's bank, means the issue of a payment order intended to carry out the payment order received by the receiving bank.

(m) "Interest" means the time value of the funds or money involved, which, unless otherwise agreed, is calculated at the rate and on the basis customarily accepted by the banking community for the funds or money involved.

#### Article 2bis. Conditional instructions

(1) When an instruction is not a payment order because it is subject to a condition but a bank that has received the instruction executes it by issuing an unconditional payment order, thereafter the sender of the instruction has the same rights and obligations under this law as the sender of a payment order and the beneficiary designated in the instruction shall be treated as the beneficiary of a payment order.

(2) This law does not govern the time of execu-

tion of a conditional instruction received by a bank, nor does it affect any right or obligation of the sender of a conditional instruction that depends on whether the condition has been satisfied.

#### Article 3. Variation by agreement

Except as otherwise provided in this law, the rights and obligations of parties to a credit transfer may be varied by their agreement.

### CHAPTER II. OBLIGATIONS OF THE PARTIES

#### Article 4. Obligations of sender

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

(2) When a payment order or a revocation of a payment order is subject to authentication other than by means of a mere comparison of signature, a purported sender who is not bound under paragraph (1) is nevertheless bound if:

- (a) the authentication is in the circumstances a commercially reasonable method of security against unauthorized payment orders, and
- (b) the receiving bank complied with the authentication.

(3) The parties are not permitted to agree that paragraph (2) shall apply if the authentication is not commercially reasonable in the circumstances.

(4) A purported sender is, however, not bound under paragraph (2) if it proves that the payment order as received by the receiving bank resulted from the actions of a person other than

- (a) a present or former employee of the purported sender, or
- (b) a person whose relationship with the purported sender enabled that person to gain access to the authentication procedure.

The preceding sentence does not apply if the receiving bank proves that the payment order resulted from the actions of a person who had gained access to the authentication procedure through the fault of the purported sender.



(5) A sender who is bound by a payment order is bound by the terms of the order as received by the receiving bank. However, the sender is not bound by an erroneous duplicate of, or an error in, a payment order if:

- (a) the sender and the receiving bank have agreed upon a procedure for detecting erroneous duplicates or errors in a payment order, and
- (b) use of the procedure by the receiving bank revealed or would have revealed the erroneous duplicate or the error.

If the error that the bank would have detected was that the sender instructed payment of an amount greater than the amount intended by the sender, the sender is bound only to the extent of the amount that was intended. This paragraph applies to an error in a revocation order as it applies to an error in a payment order.

(6) A sender becomes obligated to pay the receiving bank for the payment order when the receiving bank accepts it, but payment is not due until the beginning of the execution period.

#### Article 5. Payment to receiving bank

For the purposes of this law, payment of the sender's obligations under article 4(6) to pay the receiving bank occurs:

- (a) if the receiving bank debits an account of the sender with the receiving bank, when the debit is made; or
- (b) if the sender is a bank and subparagraph (a) does not apply,
  - (i) when a credit that the sender causes to be entered to an account of the receiving bank with the sender is used or, if not used, on the banking day following the day on which the credit is available for use and the receiving bank learned of that fact, or
  - (ii) when a credit that the sender causes to be entered to an account of the receiving bank in another bank is used or, if not used, on the banking day following the day on which the credit is available for use and the receiving banks learns of that fact, or
  - (iii) when final settlement is made in favour of the receiving bank at a central bank at which the receiving maintains an account, or
  - (iv) when final settlement is made in favour

of the receiving bank in accordance with

- a. the rules of a funds transfer system that provides for the settlement of obligations among participants either bilaterally or multilaterally, or
- b. a bilateral netting agreement with the sender; or

(c) if neither subparagraph (a) nor (b) applies, as otherwise provided by law.

#### Article 6. Acceptance or rejection of a payment order by receiving bank other than the beneficiary's bank

(1) The provisions of this article apply to a receiving bank other than the beneficiary's bank.

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

- (a) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders from the sender upon receipt,
- (b) when the bank gives notice to the sender of acceptance,
- (c) when the bank issues a payment order intended to carry out the payment order received,
- (d) when the bank debits an account of the sender with the bank as payment for the payment order,
- (e) when the time for giving notice of rejection under paragraph (3) has elapsed without notice having been given.

(3) A receiving bank that does not accept a payment order is required to give notice of rejection no later than on the banking day following the end of the execution period, unless:

- (a) where payment is to be made by debiting an account of the sender with the receiving bank, there are insufficient funds available in the account to pay for the payment order;
- (b) where payment is to be made by other means, payment has not been made; or
- (c) there is insufficient information to identify the sender.

(4) A payment order ceases to have effect if it is neither accepted nor rejected under this article



before the close of business on the fifth banking day following the end of the execution period.

**Article 7. Obligations of receiving bank other than the beneficiary's bank**

(1) The provisions of this article apply to a receiving bank other than the beneficiary's bank.

(2) A receiving bank that accepts a payment order is obligated under that payment order to issue a payment order, within the time required by article 10, either to the beneficiary's bank or to an intermediary bank, that is consistent with the contents of the payment order received by the receiving bank and that contains the instructions necessary to implement the credit transfer in an appropriate manner.

(3) If a receiving bank determines that it is not feasible to follow an instruction of the sender specifying an intermediary bank or funds transfer system to be used in carrying out the credit transfer, or that following such an instruction would cause excessive costs or delay in completing the credit transfer, the receiving bank shall be taken to have complied with paragraph (2) if it inquires of the sender what further actions it should take in the light of the circumstances, before the end of the execution period.

(4) When an instruction is received that appears to be intended to be a payment order but does not contain sufficient data to be a payment order, or being a payment order it cannot be executed because of insufficient data, but the sender can be identified, the receiving bank shall give notice to the sender of the insufficiency, within the time required by article 10.

(5) When a receiving bank detects that there is an inconsistency in the information relating to the amount of money to be transferred, it shall, within the time required by article 10, give notice to the sender of the inconsistency, if the sender can be identified. Any interest payable under article 16(3) for failing to give notice required by this paragraph shall be deducted from any interest payable under article 16(1) for failing to comply with paragraph (2).

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

**Article 8. Acceptance or rejection of a payment order by beneficiary's bank**

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

- (a) when the bank receives the payment order, provided that the sender and the bank have agreed that the bank will execute payment orders from the sender upon receipt,
- (b) when the bank gives notice to the sender of acceptance,
- (c) when the bank debits an account of the sender with the bank as payment for the payment order,
- (d) when the bank credits the beneficiary's account or otherwise places the funds at the disposal of the beneficiary,
- (e) when the bank gives notice to the beneficiary that it has the right to withdraw the funds or use the credit,
- (f) when the bank otherwise applies the credit as instructed in the payment order,
- (g) when the bank applies the credit to a debt of the beneficiary owed to it or applies it in conformity with an order of a court or other competent authority,
- (h) when the time for giving notice of rejection under paragraph (2) has elapsed without notice having been given.

(2) A beneficiary's bank that does not accept a payment order is required to give notice of rejection no later than on the banking day following the end of the execution period, unless;

- (a) where payment is to be made by debiting an account of the sender with the beneficiary's bank, there are insufficient funds available in the account to pay for the payment order;
- (b) where payment is to be made by other means, payment has not been made; or
- (c) there is insufficient information to identify the sender.

(3) A payment order ceases to have effect if it is neither accepted nor rejected under this article before the close of business on the fifth banking day following the end of the execution period.

**Article 9. Obligations of beneficiary's bank**

(1) The beneficiary's bank is, upon acceptance of a payment order, obligated to place the funds at

the disposal of the beneficiary, or otherwise to apply the credit, in accordance with the payment order and the law governing the relationship between the bank and the beneficiary.

(2) When an instruction is received that appears to be intended to be a payment order but does not contain sufficient data to be a payment order, or being a payment order it cannot be executed because of insufficient data, but the sender can be identified, the beneficiary's bank shall give notice to the sender of the insufficiency, within the time required by article 10.

(3) When the beneficiary's bank detects that there is an inconsistency in the information relating to the amount of money to be transferred, it shall, within the time required by article 10, give notice to the sender of the inconsistency if the sender can be identified.

(4) When the beneficiary's bank detects that there is an inconsistency in the information that identifies the beneficiary, it shall, within the time required by article 10, give notice to the sender of the inconsistency if the sender can be identified.

(5) Unless the payment order states otherwise, the beneficiary's bank shall, within the time required for execution under article 10, give notice to a beneficiary who does not maintain an account at the bank that it is holding funds for his benefit, if the bank has sufficient information to give such notice.

#### Article 10. Time for receiving bank to execute payment order and give notices

(1) In principle, a receiving bank is required to execute the payment order on the banking day it is received. However, if it does not, it shall do so on the banking day after the order is received, unless

- (a) a later date is specified in the order, in which case the order shall be executed on that date, or
  - (b) the order specifies a date when the funds are to be placed at the disposal of the beneficiary and that date indicates that later execution is appropriate in order for the beneficiary's bank to accept a payment order and execute it on that date.
- (1 bis) If the receiving bank executes the pay-

ment order on the banking day after it is received, except when complying with subparagraph (a) or (b) of paragraph (1), the receiving bank must execute for value as of the day of receipt.

(1 ter) If a receiving bank accepts a payment order only by virtue of article 6(2)(e), it must execute for value as of the day on which

- (a) where payment is to be made by debiting an account of the sender with the receiving bank, there are sufficient funds available in the account to pay for the payment order, or
- (b) where payment is to be made by other means, payment has been made.

(2) A notice required to be given under article 7(4) or (5) or article 9(2), (3) or (4) shall be given on or before the banking day following the end of the execution period.

(3) (Deleted.)

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

(5) If a receiving bank is required to perform an action on a day when it does not perform that type of action, it must perform the required action on the next day it performs that type of action.

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

#### Article 11. Revocation

(1) A payment order may not be revoked by the sender unless the revocation order is received by a receiving bank other than the beneficiary's at a time and in a manner sufficient to afford the receiving bank a reasonable opportunity to act before the actual time of execution or the beginning of the day on which the payment order ought to have been executed under subparagraph (a) or (b) of article 10(1), if later.

(2) a payment order may not be revoked by the sender unless the revocation order is received by the beneficiary's bank at a time and in a manner



sufficient to afford the bank a reasonable opportunity to act before the time the credit transfer is completed or the beginning of the day when the funds are to be placed at the disposal of the beneficiary, if later.

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

(4) A revocation order must be authenticated.

(5) A receiving bank other than the beneficiary's bank that executes, or a beneficiary bank that accepts, a payment order in respect of which an effective revocation order has been or is subsequently received is not entitled to payment for that payment order. If the credit transfer is completed, the bank shall refund any payment received by it.

(6) If the recipient of a refund is not the originator of the credit transfer, it shall pass on the refund to the previous sender.

(6) bis A bank that is obligated to make a refund to its sender is discharged from that obligation to the extent that it makes the refund direct to a prior sender. Any bank subsequent to that prior sender is discharged to the same extent. This paragraph does not apply to a bank if it would affect the bank's rights or obligations under any agreement or any rule of a funds transfer system.

(6) ter An originator entitled to a refund under this article may recover from any bank obligated to make a refund hereunder to the extent that the bank has not previously refunded. A bank that is obligated to make a refund is discharged from that obligation to the extent that it makes the refund direct to the originator. Any other bank that is obligated is discharged to the same extent.

(7) If the credit transfer is completed but a receiving bank executes a payment order in respect of which an effective revocation order has been or is subsequently received, the receiving bank has such rights to recover from the beneficiary the amount of the credit transfer as may otherwise be provided by law.

(8) The death, insolvency, bankruptcy or incapacity of either the sender or the originator does

not of itself operate to revoke a payment order or terminate the authority of the sender.

(8) bis The principles contained in this article apply to an amendment of payment order.

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

### Chapter III. Consequences of Failed, Erroneous or Delayed Credit Transfers

#### Article 12. Assistance

Until the credit transfer is completed, each receiving bank is under a duty to assist the originator and each subsequent sending bank, and to seek the assistance of the next receiving bank, in completing the banking procedure of the credit transfer.

#### Article 13. Refund

(1) If the credit transfer is not completed, the originator's bank is obligated to refund to the originator any payment received from it, with interest from the day of payment to the day of refund. The originator's bank and each subsequent receiving bank is entitled to the return of any funds it has paid to its receiving bank, with interest from the day of payment to the day of refund.

(2) The provisions of paragraph (1) may not be varied by agreement except when a prudent originator's bank would not have otherwise accepted a particular payment order because of a significant risk involved in the credit transfers.

(3) A receiving bank is not required to make a refund under paragraph (1) if it is unable to obtain a refund because an intermediary bank through which it was directed to effect the credit transfer has suspended payment or is prevented by law from making the refund. A receiving bank is not considered to have been directed to use the intermediary bank unless the receiving bank proves that it does not systematically seek such directions in similar cases. The sender that first specified the use of that intermediary bank has the right to obtain the refund from the intermediary bank.

(4) A bank that is obligated to make a refund to



its sender is discharged from that obligation to the extent that it makes the refund direct to a prior sender. Any bank subsequent to that prior sender is discharged to the same extent. This paragraph does not apply to a bank if it would affect the bank's rights or obligations under any agreement or any rule of a funds transfer system.

(5) An originator entitled to a refund under this article may recover from any bank obligated to make a refund hereunder to the extent that the bank has not previously refunded. A bank that is obligated to make a refund is discharged from that obligation to the extent that it makes the refund direct to the originator. Any other bank that is obligated is discharged to the same extent.

#### Article 14. Correction of underpayment

If the amount of the payment order executed by a receiving bank is less than the amount of the payment order it accepted, it is obligated to issue a payment order for the difference.

#### Article 15. Restitution of overpayment

If the credit transfer is completed, but the amount of the payment order executed by a receiving bank is greater than the amount of the payment order it accepted, it has such rights to recover the differences from the beneficiary as may otherwise be provided by law.

#### Article 16. Liability and damages

(1) A receiving bank other than the beneficiary's bank is liable to the beneficiary for its failure to execute its sender's payment order in the time required by article 10(1), if the credit transfer is completed under article 17(1). The liability of the receiving bank shall be to pay interest on the amount of the payment order for the period of delay caused by the receiving bank's failure. Such liability may be discharged by payment to its receiving bank or by direct payment to the beneficiary.

(2) If a receiving bank that is the recipient of interest under paragraph (1) is not the beneficiary of the transfer, the receiving bank shall pass on the benefit of the interest to the next receiving bank or, if it is the beneficiary's bank, to the beneficiary.

(3) A receiving bank other than the beneficiary's bank that does not give a notice required under article 7(3), (4) or (5) shall pay interest to the sender on any payment that it has received from the sender under article 4(6) for the period during which it retains the payment.

(4) A beneficiary's bank that does not give notice required under article 9(2) or (3) shall pay interest to the sender on any payment that it has received from the sender under article 4(6), from the day of payment until the day that it provides the required notice.

(5) A receiving bank that issues a payment order in an amount less than the amount of the payment order it accepted shall, if the credit transfer is completed under article 17(1), be liable to the beneficiary for interest on any part of the difference that is not placed at the disposal of the beneficiary on the payment date, for the period of time after the payment date until the full amount is placed at the disposal of the beneficiary. This liability applies only to the extent that the late payment is caused by the receiving bank's improper action.

(6) The beneficiary's bank is liable to the beneficiary to the extent provided by the law governing the relationship between the beneficiary and the bank for its failure to perform one of the obligations under article 9(1) or (5).

(7) The provisions of this article may be varied by agreement to the extent that the liability of one bank to another bank is increased or reduced. Such an agreement to reduce liability may be contained in a bank's standard terms of dealing. A bank may agree to increase its liability to an originator or beneficiary that is not a bank, but may not reduce its liability to such an originator or beneficiary.

(8) The remedies provided in this law do not depend on the existence of a pre-existing relationship between the parties, whether contractual or otherwise. These remedies shall be exclusive, and no other remedy arising out of other doctrines or law shall be available except any remedy that may exist when a bank has improperly executed a payment order or failed to execute a payment order (a) with the intent to cause loss, or (b) recklessly and with knowledge that loss might result.

#### Chapter IV. Completion of Credit Transfer and Discharge of Obligation

##### Article 17. Completion of credit transfer and discharge of obligation

- (1) A credit transfer is completed when the beneficiary's bank accepts the payment order. When the credit transfer is completed, the beneficiary's bank becomes indebted to the beneficiary to the extent of the payment order accepted by it.
- (2) If the transfer was for the purpose of discharging an obligation of the originator to the beneficiary that can be discharged by credit transfer to the account indicated by the originator, the obligation is discharged when the beneficiary's bank accepts the payment order and to the extent that it would be discharged by payment of the same amount in cash.
- (3) A credit transfer shall be considered complete notwithstanding that the amount of the payment order accepted by the beneficiary's bank is less than the amount of the originators' payment order because one or more receiving banks have deducted charges. The completion of the credit transfer shall not prejudice any right of the beneficiary under the applicable law to recover the amount of those charges from the originator.

#### Chapter V. Conflict of Laws

##### Article 18. Conflict of laws

- (1) The rights and obligations arising out of a payment order shall be governed by the law chosen by the parties. In the absence of agreement, the law of the State of the receiving bank shall apply.
- (2) The second sentence of paragraph (1) shall not affect the determination of which law governs the question whether the actual sender of the payment order had the authority to bind the purported sender for the purposes of article 4(1).
- (3) For the purposes of this article,
  - (a) where a State comprises several territorial units having different rules of law, each territorial unit shall be considered to be a separate State, and
  - (b) branches and separate offices of a bank in different States are separate banks.



## ANNEX II

Selected bibliography on the UNCITRAL Model Law 1) On general issues of funds transfers:

Effros, A Banker's Primer on the Law of Electronic Funds Transfers: Banking L.J. (1988)510-543; Hellner, Rechtsfragen des Zahlungsverkehrs unter besonderer Berücksichtigung des Bildschirmtextverfahrens, in: Festschrift W. Werner, Berlin/New York 1984, S.252-280; Schönle, Ort und Zeit bargeldloser Zahlung, in: Festschrift W. Werner, Berlin/New York 1984, S. 817-839. **European Community:** Commission of the EC, Discussion Paper - Making Payments in the Internal Market, COM(90) 447, 26.09.1990; Gutwirth/Joris, op. cit, above, footnote 5. **France:** Gallouédec-Genuys, Nouvelles technologies de l'information et droit de la preuve, Paris 1990, (extensive bibliography on p.117-133); Martin, Aspects juridiques du virement: Rev.dr.bancaire et de la bourse (1989)149-152. **Germany:** Bankrecht und Bankpraxis, Köln (Loseblatt), Bd.III Nr.6: Zahlungsverkehr; Canaris in: Staub, Grosskommentar HGB, 4.Aufl. 1988, 10.Lfgr: Bankvertragsrecht, 1.Teil; Hadding/Häuser, Rechtsfragen des bargeldlosen Zahlungsverkehrs, RWS-Skript 127, Köln 1984. **Italy:** Banca d'Italia, White Paper on the Payment System in Italy (Roma 1986); id., Analyzing the Italian Payment System: The Current Status and the Future: World of Banking (1987)6-12; Maccarone, I trasferimenti elettronici di fondi nel diritto italiano: Bancaria (1984)1090-1101. **Switzerland:** Hess, Rechtliche Aspekte der Bankübersweisung, unter besonderer Berücksichtigung des Interbankzahlungsverkehrssystems Swiss Interbank Clearing (SIC), SZW/RSDA, (1991)101-116; **USA:** Patrikis, Developments in the Law of Large Dollar Electronic Payments in the United States: RDAI (1987)639-648; (various authors), Special issue on the UCC (in particular Article 4A, EDI, financial services): Business Lawyer 45(1990)1389-2052.

2) On the UNCITRAL Model Law:

United Nations, UNCITRAL, Comments on the Draft Model Law on International Credit Transfers, Report of the Secretary General (A/CN.9/346; 15 May 1991). UNCITRAL, Report of the Working Group on International Payments on the Work of its Twenty-second Session (A/

CN.9/344; 10th January 1991). Bergsten, Legal Aspects of International Electronic Funds Transfers: RDAI (Paris) (1987)1-20; Carey, Electronic Funds Transfers: Model Rules: International Business Lawyer (London) 16(1988)104-105; Federación Latinoamericana de Bancos (ed.)(Bogotá), Reunión conjunta de FELABAN y la Secretaría de UNCITRAL sobre letras de cambio y aspectos legales de la transferencia electrónica de fondos: Rev.FELABAN (1988)13-209; Radcliffe, Towards Uniformity in the Rules Governing Electronic Funds Transfers: Butterworths J. (London) (1988)364-366; Schinnerer, Zum "Leitfaden"-Entwurf von UNCITRAL über den internationalen elektronischen Überweisungsverkehr: ZfRV (Vienna) 26(1985)226-240; Schneider, Das UNCITRAL-Modellgesetz über den internationalen Überweisungsverkehr: Wertpapiere mitteilungen (Frankfurt a.M.) 43(1989)285-293; Thévenoz, Error and Fraud in Wholesale Funds Transfers: U.C.C. Article 4A and the UNCITRAL Harmonization Process, Zürich 1990; Vasseur, Informations sur les aspects juridiques des transferts internationaux de fonds par d'autres moyens que les cartes: Banque & Droit (Paris) (1989)61-66. Droit (Paris) (1989) 61-66; Wulff, Two ways to achieve the same goal - the model law on international credit transfers and the new UCC Article 4A in the national and international contexts: Wisconsin Int'l. L. J. 9 (Fall, 1990) 69-123.



### ANNEX III Selected International Initiatives

#### A. Place of Payment / Time of Payment / Time limits

- Council of Europe: European Convention on the Place of Payment of Money Liabilities; Basle, 16.5.1972. • Council of Europe: European Convention on the Calculation of Time Limits; Basle, 16.5.1972. • Hague Diplomatic Conference: Convention relating to a Uniform Law on the International Sale of Goods; The Hague, 1.7.1964. • International Law Association: Model rules on the time of payment of monetary obligations; (62nd Conference) Seoul, August 1986. • United Nations-UNCITRAL: United Nations Convention on Contracts for the International Sale of Goods; Vienna, 11.04.1980.

#### B. Foreign money liabilities

- Council of Europe: European Convention on Foreign Money Liabilities; Paris, 11.12.1967.

#### C. Funds Transfer / Payment / Payment Systems

- Council on International Banking: Interbank Compensation Rules; New York, first effective 1.11.1977. • European Community: Commission Recommendation on a European Code of Conduct relating to electronic payment; Brussels, 8.12.1987. • European Community: Commission Recommendation concerning payment systems, and in particular the relationship between card holder and card issuer; Brussels, 17.11.1988. • European Community: Commission Recommendation on the transparency of banking conditions applicable to cross-border financial transactions; Brussels, 14.02.1990. • Group of Ten Central Banks: Report of the Committee on Interbank Netting Schemes of the Central Banks of the Group of Ten Countries; Basle, November 1990. • International Chamber of Commerce: Guidelines on International Interbank Funds Transfers and Compensation; Paris, February 1990. • International Organization for Standardization: Bank telecommunication - Funds transfer messages; Geneva, 15.09.1987. • United Nations-UNCITRAL: Model Law on International Credit Transfers; latest draft: A/CN.9/WC IV, 10th January 1991, revised in Vienna, June 1991. • Universal Postal Union: Arrangement concernant les mandats de poste et les bons postaux de voyage; Hamburg, 27.7.1984.

#### D. Collections

- International Chamber Of Commerce: Uniform Rules for Collections; Paris, 1978. • Universal

Postal Union: Arrangement concernant les recouvrements; Hamburg, 27.7.1984.

#### E. Bankruptcy

- Council of Europe: Draft European Convention on Bankruptcy; 1984. • European Community: Commission, Draft of a Convention on Bankruptcy, Winding-up, Arrangements, Compositions and Similar Proceedings; Brussels, 26.6.1980. • International Bar Association: Model International Insolvency Cooperation Act (MIICA); Helsinki, June 1989.

#### F. Private international law

- European Community: Convention on the Law Applicable to Contractual Obligations ("Rome Convention"); Rome, 16.6.1980. • European Community: Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ("Brussels Convention"); Brussels, 27.9.1968. • European Community / EFTA: EC / EFTA Parallel Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ("Lugano Convention"); Lugano, 16.9.1988. • Hague Conference on Private International Law: Convention on the law applicable to contracts for the international sale of goods; The Hague, 22.12.1986. • Hague Conference on Private International Law: Note on conflicts of laws occasioned by transfrontier data flows (prepared by Michael Pelichet); The Hague, November 1988.