

International Model Law on International Credit Transfer

Chapter I - General provisions¹

Article 1

Sphere of application²

(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.

Article 2 - Definitions

For the purposes of this law:

(a) "Credit transfer" means the series of operations, beginning with the originator's payment order, made for the purpose of placing funds at the disposal of a 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;

(f) "Receiving bank" means a bank that receives a payment order;

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

(h) "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;

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

(j) "Banking day" means that part of a day during which the bank performs the type of action in question;

(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 11(1) and ending on the last day on which it may be executed under that article;

(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 3 - 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 execution 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 4 - 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 5 - Obligations of sender

(1) A sender is bound by a payment order or an amendment or 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 an amendment or 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 a purported sender is bound under paragraph (2) 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 or discrepancy in, a payment order if

(a) the sender and the receiving bank have agreed upon a procedure for detecting erroneous duplicates, errors or discrepancies in a payment order, and

(b) use of the procedure by the receiving bank revealed or would have revealed the erroneous duplicate, error or discrepancy.

If the error or discrepancy 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. Paragraph (5) applies to an error or discrepancy in an amendment or a revocation order as it applies to an error or discrepancy 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 6 - Payment to receiving bank

For the purposes of this law, payment of the sender's obligation under article 5(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 learns 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 bank 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 bank 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 7 - 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; or
 - (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 8 - 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 11, 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) A receiving bank that 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, shall be taken to have complied with paragraph (2) if, before the end of the execution period, it inquires of the sender what further actions it should take.

(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 11.

(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 11, give notice to the sender of the inconsistency, if the sender can be identified. Any interest payable under article 17(4) for failing to give the notice required by this paragraph shall be deducted from any interest payable under article 17(1) for failing to comply with paragraph (2) of this article.

(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 9 - 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;
or

(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 10 - 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 11.

(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 11, 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 intended to identify the beneficiary, it shall, within the time required by article 11, 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 11, give notice to a

beneficiary who does not maintain an account at the bank that it is holding funds for its benefit, if the bank has sufficient information to give such notice.

Article 11 - Time for receiving bank to execute payment order and give notices

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

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

(b) the payment 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, the order shall be executed on that date.

(2) If the receiving bank executes the payment 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.

(3) A receiving bank that becomes obligated to execute a payment order by virtue of accepting a payment order under article 7(2)(e) must execute for value as of the later of the day on which the payment order is received and 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.

(4) A notice required to be given under article 8(4) or (5) or article 10(2), (3) or (4) shall be given on or before the banking day following the end of the execution period.

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

(6) 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.

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

Article 12 - 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 bank at a time and in a manner sufficient to afford the receiving bank a reasonable opportunity to act before the later of the actual time of execution and the beginning of the day on which the payment order ought to have been executed under subparagraph (a) or (b) of article 11(1).

(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 later of the time the credit transfer is completed and the beginning of the day when the funds are to be placed at the disposal of the beneficiary.

(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 earlier than the time specified in paragraph (1) or (2).

(4) A revocation order must be authenticated.

(5) A receiving bank other than the beneficiary's bank that executes, or a beneficiary's 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 its sender.

(7) 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.

(8) 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.

(9) Paragraphs (7) and (8) do not apply to a bank if they would affect the bank's rights or obligations under any agreement or any rule of a funds transfer system.

(10) 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.

(11) 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.

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

(13) 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 13 - Assistance

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

Article 14 - 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 transfer.

(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.

(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.

(6) Paragraphs (4) and (5) do not apply to a bank if they would affect the bank's rights or obligations under any agreement or any rule of a funds transfer system.

Article 15 - 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, other than as a result of the deduction of its charges, it is obligated to issue a payment order for the difference.

Article 16 - 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 difference from the beneficiary as may otherwise be provided by law.

Article 17 - Liability for interest

(1) A receiving bank that does not comply with its obligations under article 8(2) is liable to the beneficiary if the credit transfer is completed. The liability of the receiving bank is to pay interest on the amount of the payment order for the period of delay caused by the receiving bank's non-compliance. If the delay concerns only part of the amount of the payment order, the liability shall be to pay interest on the amount that has been delayed.

(2) The liability of a receiving bank under paragraph (1) may be discharged by payment to its receiving bank or by direct payment to the beneficiary. If a receiving bank receives such payment but is not the beneficiary, 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) An originator may recover the interest the beneficiary would have been entitled to, but did not, receive in accordance with paragraphs (1) and (2) to the extent the originator has paid interest to the beneficiary on account of a delay in the completion of the credit transfer. The originator's bank and each subsequent receiving bank that is not the bank liable under paragraph (1) may recover interest paid to its sender from its receiving bank or from the bank liable under paragraph (1).

(4) A receiving bank that does not give a notice required under article 8(4) or (5) shall pay interest to the sender on any payment that it has received from the sender under article 5(6) for the period during which it retains the payment.

(5) A beneficiary's bank that does not give a notice required under article 10(2), (3) or (4) shall pay interest to the sender on any payment that it has received from the sender under article 5(6), from the day of payment until the day that it provides the required notice.

(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 10(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. In particular, it may not reduce its liability by an agreement fixing the rate of interest.

Article 18 - Exclusivity of remedies

The remedies in article 17 shall be exclusive, and no other remedy arising out of other doctrines of law shall be available in respect of non-compliance with articles 8 or 10, except any remedy that may exist when a bank has improperly executed, or failed to execute, a payment order (a) with the specific intent to cause loss, or (b) recklessly and with actual knowledge that loss would be likely to result.

Chapter IV - Completion of credit transfer

Article 19

Completion of credit transfer³

(1) A credit transfer is completed when the beneficiary's bank accepts a payment order for the benefit of the beneficiary. 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. Completion does not otherwise affect the relationship between the beneficiary and the beneficiary's bank.

(2) A credit transfer is completed notwithstanding that the amount of the payment order accepted by the beneficiary's bank is less than the amount of the originator's 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 governing the underlying obligation to recover the amount of those charges from the originator.

The Commission suggests the following text for States that might wish to adopt it:

Article Y

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.

1. (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.

(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;

(b) branches and separate offices of a bank in different States are separate banks.

2. This law does not deal with issues related to the protection of consumers.

The Commission suggests the following text for States that might wish to adopt it:

3. If a credit 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.