

LAW OF COMMERCE
No 30 of 1984.

Law of Commerce
No 30, 1984

RESOLUTION NO. 328

In the name of the People:

The Revolution Command Council:

Pursuant to what has been resolved by the Council,
Pursuant to Article 53 of the Provisional
Constitution and Article 47(2) of National Council
Law No. 55 of 1980; and

Pursuant to the Provisions of Article 42(a) of the
Provisional Constitution;

Has in its meeting held on 15/3/1984 resolved to enact the
following Law:

LAW OF COMMERCE NO. 30 OF 1984

PART I - BASES AND VALID SCOPE OF THE LAW

Article 1. - The basics of this Law are:

- (1) organisation of the economic activity of the Socialist,
Mixed and Private Sectors in conformity with the pre-
requisites of the Development Plan;
- (2) making the role of both the Mixed and Private Sectors
complementary to the activity of the Socialist Sector;
- (3) curbing the principle of the dominance of will and
causing the legal relationship to override contractual
relationships.

Article 2. - The commercial activities practised by the State
are from the basic duties of the State within the scope of pro-
viding commodities and services to its nationals.

IRAQ 1&2/85: LAW OF COMMERCE

Article 3. - Commerce is an economic activity which must rest on confidence, loyalty and strict observance of the rules of law; he who does not abide by the same shall be subject to civil penal liability.

Article 4. - (1) This Law shall apply to the economic activity of the Socialist, Mixed and Private Sectors.

(2) The Civil Law shall apply to all matters not specifically provided for herein or in any other specific law.

PART II - COMMERCIAL ACTIVITIES AND THE TRADER

CHAPTER 1
COMMERCIAL ACTIVITIES

Article 5. - The following shall be deemed to be commercial activities if they aim at profit, which shall be presumed, unless the contrary is established:

- (1) purchase or renting real or movable property for re-sale or renting out;
- (2) supply of goods and services;
- (3) import or export of goods and the business carried out by import/export offices;
- (4) industry and extraction of raw materials operations;
- (5) publishing, printing, photography and advertising;
- (6) construction, restoration, demolition and maintenance contracts;
- (7) services rendered by touristic offices, hotels, restaurants, cinema houses, playgrounds, and other various display premises;
- (8) sale in public auction premises;
- (9) carriage of goods and persons;

IRAQ 1&2/85: LAW OF COMMERCE

- (10) shipping, unshipping or clearing of goods;
- (11) depositing goods in public depots;
- (12) undertaking to provide the requirements of celebrations and other social occasions;
- (13) operations of banks;
- (14) insurance;
- (15) dealing in shares and debentures of companies;
- (16) commercial and commission agencies, transport agency, auctioneering and other commercial intermediary's activities.

Article 6. - Dealing with negotiable instruments and related operations shall be a commercial activity, regardless of the capacity and intention of the person carrying them out.

CHAPTER 2
THE TRADER

Article 7. - (1) Every natural or juristic person who as a profession carries on in his name and for his own account a commercial activity in accordance herewith is deemed to be a trader.

(2) The competent minister may determine the nature and scope of the commercial activity which can be carried out by a trader such as will secure execution of the Development Plan.

Article 8. - A trader must enjoy full capacity and be a national of Iraq; a non-Iraqi may carry on commercial activity according to the requirements of the Development Plan and pursuant to a permit (issued) by the competent authority.

Article 9. - A trader must have his name registered in the Register of Commerce, keep the legally prescribed books of

IRAQ 1&2/85: LAW OF COMMERCE

account and have the business name and premises for his commercial dealings.

Article 10. - The provisions relating to the trader which are provided for in the Law shall apply to the Institutions of the Socialist Sector inasmuch as they do not conflict with the nature of the services rendered.

Article 11. - (1) A person who carries on a small (petty) trade shall not be deemed to be a trader.

(2) A petty trade is that which is practised by a person at insignificant cost and is confined to his physical activity or to the use of small-engined machines.

CHAPTER 3
DUTIES OF A TRADER

SECTION TWO
COMMERCIAL BOOKS

Article 12. - A trader whose capital is not less than ID30,000 (thirty thousand dinars) must keep such books which are consistent with the nature and significance of his trading activity in a manner which reveals his financial situation; in all cases, he must keep the following two books:

- (a) a journal;
- (b) a ledger.

Article 13. - All commercial operations transacted by the trader shall be entered in detail and day by day in the journal; a sole trader shall also enter therein day by day his personal drawings.

IRAQ 1&2/85: LAW OF COMMERCE

Article 14. - A trader may also keep subsidiary journals where-
in he shall enter details of the various kinds of commercial
transactions effected, in which case it would be sufficient for
him to enter month by month the gross of such operations in the
basic journal; where a trader fails to make such gross entries,
every subsidiary book shall be deemed to be basic.

Article 15. - (1) At the end of his financial year, the trader
shall enter in the ledger details of the funds allotted for his
trade; where the details of such funds have been entered in a
separate book, it would be sufficient to show the gross thereof
in the ledger.

(2) The annual balance sheet and the profit and loss
account shall be entered in or a copy or photostat thereof shall
be attached to the ledger.

Article 16. - A trader shall keep true copies of the originals
of letters, telegrams and other writings despatched or received
by him which are relevant to his trade; such writings must be
kept in a clear and appropriate manner.

Article 17. - (1) The (commercial) books must be free of
blanks, crossing out, erasures or writing in the margins or
between the lines.

(2) Before using the basic journal, its pages must be
numbered and the notary public must sign and affix his office
stamp on every page, after mentioning the number of pages of the
book; cards used by the Institutions of the Socialist Sector for
organising their accounts must be certified in accordance with
directives issued by the Minister of Trade.

(3) At the end of his financial year, the trader must pro-
duce his basic journal to the notary public for certification of
the number of pages thereof which has been used during said year;
when all the pages of said book have been used, it must be pro-
duced to the notary public for certification of the fact.

(4) Where the commercial activities of a trader have been

IRAQ 1&2/85: LAW OF COMMERCE

suspended for whatever cause, the trader or his heirs must produce the basic journal to the notary public for certification of the fact.

Article 18. - (1) A trader or his heirs shall keep the books and the writings supporting the entries thereof for a period of seven years to run from the date of certification of using up all the pages thereof or of the suspension of the trader's activity; the aforementioned must also keep the originals or copies of letters, telegrams and telexes for a period of seven years to run from the date of issue or receipt.

(2) A trader may keep photostats instead of originals during the time limit provided for in paragraph (1) of this Article.

Article 19. - A trader may substitute the books provided for in Articles 14 and 16 hereof by using technical devices and advanced modern methods for keeping his accounts and showing his financial situation.

Article 20. - The Ministry of Trade shall take such measures as deemed appropriate for ascertaining that the trader keeps books in accordance with the rules provided for in this Section and the same shall be subject to its control.

SECTION TWO
THE BUSINESS NAME

Article 21. - (1) Every trader - natural or juristic person - must in order to distinguish his activity take a trade (business) name which is clearly different from other trade names.

(2) A trader may not take a trade name from other than Arab or Iraqi names; it must not comprise a statement violating the public order or which may mislead the public, deceive them as to his actual state or real commercial activity.

IRAQ 1&2/85; LAW OF COMMERCE

(3) The branch of a foreign company or business firm or of a foreign trader licensed in Iraq shall be registered in the same name as that in which he is registered in his country of origin, to which must be added the expression "Iraq Branch".

Article 22. - A sole trader may take this tripartite name (consisting of three), his name and surname or any other appropriate name as his trade name.

Article 23. - The trade name of a company must indicate its type and contain at least the name of a partner (in case of a collective name or simple partnership or an individual enterprise).

Article 24. - (1) Anyone who has registered a trade name in the Register of Commerce in accordance with the provisions hereof, such name may not be used by another person who is engaged in the same kind of trade as that of the owner of the name within the same Mohafazat (district) wherein such name is registered.

(2) A trade name may not be disposed of independently of the commercial premises; nevertheless, the person to whom the ownership of a trading premises is transferred may use the name of his predecessor, if he is authorized to do so by the assignor or the person who has succeeded to the rights thereof, provided an addition is made to the name purporting to transmission of the ownership and the same is entered in the Register of Commerce.

Article 25. - (1) The Registrar of Trade Names must register the trade name if it is in conformity with the provisions hereof and to reject if, if it is non-conformant thereto; he must have his decision of registration or rejection published in the Bulletin which is issued by the competent Chamber of Commerce and Industry.

(2) Any interested person may file an objection with the Registrar of Trade Names against the registration of a trade name, within fifteen days to run from the date of promulgation

thereof; the objection must show his relationship to the name and the causes for the objection; the Registrar shall expunge the name, if it is revealed to him that the registration was in violation of the law; the Registrar may also of his own accord expunge the name at any time if he becomes satisfied that the registration violates the law; in both said cases the expunction of the registration is subject to publication.

(3) Decisions to register, refuse to register, to transfer ownership or amend the trade name is appealable to the competent court of first instance within thirty days to run from the date of service being made on the interested parties.

SECTION THREE THE REGISTER OF COMMERCE

Article 26. - The Chambers of Commerce and Industry shall take over the duties provided for herein pertaining to the Register of Commerce; presidents of the Chambers of Commerce and Industry shall be Registrars of Trade Names and in charge of the Registers of Commerce thereof.

Article 27. - The Register of Commerce is a public register to be prepared and kept by the Chambers of Commerce and Industry for entering therein particulars mandatory on or allowed to a trader pursuant to the law, such as will determine his identity, the kind of activity practised and the system of running his business, as well as changes occurring thereto.

Article 28. - A Traders' Register of Commerce shall be in two kinds: a Nominal Register wherein the names of traders are entered; and a Specific (Classified) Register, whereby the traders shall be classified according to the type of their activity.

Article 29. - The General Federation of the Iraqi Chambers of

IRAQ 1&2/85; LAW OF COMMERCE

Commerce and Industry shall keep General and Central Nominal and Specific (Classified) Registers, which shall contain the particulars entered in the Registers of the Chambers of Commerce and Industry concerned.

Article 30. - The Register of Commerce is based on the principle of publicity: every national may apply to have access to its contents and to obtain a certified copy of said contents against payment of a fee which is fixed in the Schedule attached hereto.

Article 31. - The Chamber of Commerce and Industry concerned shall publish a summary of the particulars entered in the Register in a bulletin to be issued by it for this purpose.

Article 32. - The Chamber of Commerce and Industry concerned must satisfy itself that the particulars entered in the Register are correct and exercise control to ensure that such particulars conform to the facts.

Article 33. - (1) Every trader shall within thirty days to run from the date of opening or alternatively from the date of acquiring title of a commercial premises submit an application for registration in the Register of Commerce, comprising the following information:

- (a) the name, date and place of birth and the nationality of the trader;
- (b) his trade name;
- (c) the type of trade carried on;
- (d) the date of opening of or acquiring title to the commercial premises;
- (e) the addresses of the trader's head office, and branches in Iraq or abroad, as well as of the other commercial premises belonging to the trader and the nature of the trade being carried out in each of said branches;

IRAQ 1&2/85: LAW OF COMMERCE

(f) names of agents (if any) of the trader and the date and place of birth and nationality of each one of them.

(2) Where a trader opens a branch for his trade, he shall state in the application for registration in the Register, the number and date of the entry of the head office and the name, date and place of birth and nationality of the branch manager, as well as the date of opening the branch.

(3) Where a trader has a head office outside Iraq and a branch therein, he shall make reference in the application for registration of the branch to the permit issued to him for carrying on his activity in Iraq.

Article 34. - (1) A company shall within thirty days to run from the date of establishment thereof submit an application for registration in the Register of Commerce, which must comprise the following information:

- (a) name (style) of the company;
- (b) date of establishment;
- (c) type of commercial activity practised;
- (d) the names of the promoters, the chairman of Directors and of the delegated managers;
- (e) its head office.

(2) The company must in general include in the application for registration the information provided for in Article 33 hereof.

(3) A foreign company's branch or economic enterprise must apply for registration in accordance with paragraphs (1) and (2) of this Article, within thirty days to run from the date of his licence in Iraq.

Article 35. - The trader or manager of the branch or company shall apply for marking in the Register of Commerce any amendment occurring to the particulars provided for in Articles 33 and 34 hereof; the application for marking must be submitted within thirty days to run from the date of the legal disposal, judgement or the fact necessitating such marking.

IRAQ 1&2/85: LAW OF COMMERCE

Article 36. - (1) The following particulars shall be marked in the Register of Commerce:

- (a) adjudication of insolvency and subjection of a trader to liquidation;
- (b) an adjudication of a composition (concordat preventif) and ending the state of insolvency and of nullification of a composition;
- (c) judgement of loss of or diminished capacity of a trader, with the name of the person appointed to act for him and the judgement discharging the trader.

(2) In cases provided for in paragraph (1) of this Article, the Court shall send copy of the judgement entered within thirty days of its becoming final to the Chamber of Commerce and Industry having jurisdiction for marking in the Register of Commerce.

Article 37. - Every natural or juristic person must:

- (1) mention in all his correspondence and printed matter concerning his trade the Register of Commerce wherein he is entered and the entry number;
- (2) have his trade name posted on the frontage (facade) of his premises.

SECTION FOUR

PENALTY TO BE IMPOSED ON A TRADER WHO VIOLATED HIS DUTIES

Article 38. - A trader - natural or juristic person - shall be punished with a fine of not less than one hundred nor more than one thousand dinars, who has violated any of the provisions relative to keeping commercial books, the taking of a trade name and the registration in the Register of Commerce.

PART III - COMMERCIAL PAPERS (NEGOTIABLE INSTRUMENTS)

Article 39. - A negotiable instrument (commercial paper) is a formal document negotiable by indorsement or delivery, made in a specified form, by which a person undertakes or orders another person named therein to pay a certain specified sum of money at a certain time and place.

CHAPTER 1 THE BILL OF EXCHANGE

SECTION ONE THE MAKING OF BILLS OF EXCHANGE

Article 40. - A Bill of Exchange, which shall be termed hereinafter 'Bill' must contain the following particulars:

- (1) the words 'Bill of Exchange' or 'Bill' written in the text thereof in the language in which the Bill of Exchange is written;
- (2) an unconditional order to pay a certain sum of money;
- (3) the name of the person ordered to pay (drawee);
- (4) the date of maturity;
- (5) the place of payment;
- (6) the name of the person to whom or to whose order payment must be made (the beneficiary);
- (7) the date and place of making the Bill;
- (8) the name and signature of the maker of the Bill (drawer).

Article 41. - An instrument which does not contain any of the mandatory particulars mentioned in Article 40 hereof shall be deemed an inchoate Bill and shall not have effect as a negotiable instrument except in the following cases:

IRAQ 1&2/85: LAW OF COMMERCE

- (1) if the date of maturity is not stated therein, the Bill shall be deemed to be payable on sight;
- (2) if the place of payment is not mentioned therein, the address stated next to the drawee's name shall be deemed to the place for payment and also a domicile for the drawee;
- (3) where the place of making is not stated therein it shall be deemed to have been made in the place shown next to the drawee's name.

Article 42. - (1) A Bill may be drawn payable to the order of the drawer himself.

- (2) A Bill may be drawn payable to the drawer.
- (3) A Bill may be drawn payable to a third party.

Article 43. - A Bill may provide for payment at the domicile of a person other than the drawee, regardless of whether said domicile lies in the area of the drawee's domicile or not.

Article 44. - (1) The drawer of a Bill which is payable on, or at a certain specified period after, sight may stipulate for the payment of interest on the sum expressed therein; said stipulation shall be null and void in regard to other Bills.

(2) The stipulation for interest shall be null and void if the rate of interest is not mentioned in the Bill itself.

(3) Interest begins to run from the date of making the Bill where no other date has been fixed.

Article 45. - (1) When the sum payable of a Bill is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by words is the sum payable.

(2) Where the sum is expressed several times in words and also in figures and there is a discrepancy between them, the lesser sum denoted shall be payable.

Article 46. - An obligation by a person lacking capacity or who

IRAQ 1&2/85: LAW OF COMMERCE

is incompetent arising out of subscribing his signature on a Bill, in whatever capacity, shall be null and void in regard to himself only; he may invoke such nullity against any holder of such Bill.

Article 47. - Where one of the signatures subscribed on a Bill is that of a person who has no capacity to incur liability, or where the signature is forged or is of fictitious persons, or where the signature does not, on any ground, bind the signatory thereof or the signatory it purports to be, the liabilities of the other signatories are nevertheless valid.

Article 48. - (1) The form of a Bill shall be in conformity with the law of the State wherein it is drawn; the Bill, however, shall not be deemed null and void on grounds of defect in form if the form prescribed herein has been observed.

(2) The capacity to incur liability on a Bill shall be determined according to the law of the State of which the obligor is a national; but where his country's law refers to the law of another State, the positive rules provided for in the law of the latter State shall be applicable.

(3) The obligation of a person who under the applicable law lacks legal capacity, shall nevertheless be valid if he has subscribed his signature on the Bill in the territory of a State under whose law as he is deemed to have capacity.

Article 49. - (1) A person who without authority signs a Bill of Exchange for another person shall be personally liable thereunder; when he discharges said liability, the rights which would have devolved to the person on whose behalf he purported to have acted, shall devolve to him.

(2) The foregoing provision shall apply also to a person who acts ultra vires.

Article 50. - (1) The drawer of a Bill of Exchange engages acceptance and discharge thereof.

IRAQ 1&2/85: LAW OF COMMERCE

(2) The drawer may stipulate to be relieved of the liability of acceptance and every stipulation relieving him of the liability of discharge shall be null and void.

**SECTION TWO
INDORSEMENT**

Article 51. - (1) A Bill of Exchange is negotiable by indorsement even when it does not contain an express stipulation that it is drawn 'to order'.

(2) A Bill of Exchange is not negotiable when the drawer stipulates therein that it is not 'to order' or any other term purporting the same meaning, save in accordance with the provisions governing the transfer of a right.

(3) Indorsement may be made to the drawee regardless of whether he accepted the Bill of Exchange or not; indorsement may also be made to the drawer or to any other obligor; all the foregoing persons may re-indorse the Bill of Exchange.

Article 52. - (1) The indorsement must be unconditional and any condition attached to the indorsement shall be null and void.

(2) Partial indorsement is void.

Article 53. - (1) The indorsement must be written on the Bill of Exchange itself or on an attachment and be signed by the indorser.

(2) The name of the beneficiary may not be stated in the indorsement; the indorsement may also be by the indorser's signature (blank indorsement), in which case it must be written on the back of the Bill of Exchange or on the attachment.

(3) Indorsement 'to bearer' shall be deemed to be blank indorsement.

Article 54. - (1) The indorsement carries all rights arising from a Bill of Exchange.

IRAQ 1&2/85: LAW OF COMMERCE

- (2) In case of blank indorsement, the holder may:
- (a) fill in the blank by writing his name or another person's name;
 - (b) re-indorse the Bill of Exchange in blank or to another person;
 - (c) deliver the Bill of Exchange to another person without filling in the blank and without indorsing it.

Article 55. - (1) Unless otherwise provided, the indorser shall be held liable for the acceptance and discharge of a Bill of Exchange.

(2) The indorser may prohibit its re-indorsment, in which case he shall not be liable to any person holding the Bill of Exchange by subsequent indorsement.

Article 56. - (1) The possessor of a Bill of Exchange shall be deemed to be its lawful holder when he proves that he is entitled thereto by successive indorsements, even when the last was 'blank indorsement'; a crossed indorsement shall be deemed null and void in this regard; when the blank indorsement is followed by another indorsement the signatory on this last indorsement shall be deemed to be the person to whom the right to the Bill of Exchange has passed by blank indorsement.

(2) If a person loses possession of a Bill of Exchange as a result of an incident the holder shall not be bound to surrender it if he proves his right thereto in accordance with the preceding paragraph (1), unless he has acquired it in bad faith or has committed a gross fault to acquire it.

Article 57. - The debtor was is sued for a Bill of Exchange may not adduce any defence against the holder based on his personal relationship with the drawer or prior holders unless the holder's intention at the time of acquiring the Bill of Exchange was to cause damage to the debtor.

IRAQ 1&2/85: LAW OF COMMERCE

Article 58. - (1) When the indorsement stipulates 'value for collection', 'value for receipt', 'by procuration' or any similar expression indicating delegation of powers, the holder may exercise all the rights arising on a Bill of Exchange but may not indorse it except as agent; in such case the obligors may raise against the holder the defence which may be brought against the indorser.

(2) The procuration indicated in the indorsement shall not lapse by the principal's death or if he becomes incompetent or of diminished competency.

Article 59. - (1) Where the indorsement contains the expression 'value for security', 'value is a pledge' or any similar term indicating a mortgage, the holder of the Bill of Exchange may exercise all the rights arising thereon; if he indorses it, the indorsement is deemed as made by procuration.

(2) The debtors on the Bill of Exchange may not bring against the holder a defence based on their personal relationship with the indorser save when the time of acquiring the Bill the holder intended to cause harm to the debtor.

Article 60. - (1) An indorsement after maturity shall have the same effects as a prior maturity indorsement; but an indorsement after a non-payment protest or after the expiry of the time limit for making the protest shall have the same effects as for the transfer of a right.

(2) An indorsement which does not bear a date shall be deemed to have been made before the expiry of the time limit set for the protest unless the contrary is proved.

Article 61. - An indorsement may not be pre-dated; a pre-dated indorsement shall be deemed to be a forgery.

SECTION THREE
CONSIDERATION FOR PAYMENT

Article 62. - The drawer of a Bill of Exchange or he for whose account a Bill of Exchange is drawn shall make available to the drawee sufficient funds to pay the value thereof; however, a person who has drawn for the account of another shall be liable towards the indorsees and holder of the Bill and no others to make available sufficient funds to pay the value thereof.

Article 63. - Provision for payment is deemed to be available when, on the maturity date of the Bill of Exchange, the drawee is indebted to the drawer or to the person who ordered the drawing of the Bill of Exchange in a certain specified amount of money payable and at least equal to the sum of the Bill of Exchange.

Article 64. - (1) The acceptance of a Bill of Exchange presupposes the availability with the acceptor of provision for payment; the contrary to the said presumption may not be proved in the relationship of the drawee with the holder.

(2) In case of denial, regardless of whether the Bill of Exchange has been accepted or not, the onus of proof is on the drawer himself that he had with the drawee on the date of maturity of the Bill of Exchange sufficient funds to pay its value; if he fails to do so, he shall be liable for payment, even when he protested after the prescribed time limit; but when the drawer proves that the provision was and remained available until the time limit for the protest, his liability shall be discharged to the extent of such provision, save where it had been used for his benefit.

Article 65. - (1) Title to the consideration for payment passes by operation of the law to the consecutive holders of the Bill of Exchange.

(2) Where the consideration is less than the amount of the Bill of Exchange, the holder is vested with the same rights in

IRAQ 1&2/85: LAW OF COMMERCE

regard to the deficit as those vested upon him in regard to the entire consideration; this provision applies where the consideration for payment is a debt, the subject of a dispute or is not payable on the maturity date of the Bill.

Article 66. - The drawer shall, even when protesting after the statutory time limit, deliver to the holder of the Bill of Exchange the documents which enable him to receive the consideration for payment; when the drawer is adjudged bankrupt, the liquidator shall do so.

Article 67. - When the drawer is adjudged bankrupt, even before the maturity date of the Bill of Exchange, the holder to the exclusion of the drawer's other creditors shall receive his rights from the payment consideration which was validly made available with the drawer.

Article 68. - (1) If the drawee is adjudged bankrupt and the payment consideration was a debt due from him, it shall be included in the assets of the bankruptcy.

(2) Where the drawee has possession on behalf of the drawer goods, negotiable instruments, financial securities or other assets recoverable under the bankruptcy provisions, and if such assets were destined expressly or implicitly for payment of the consideration of the Bill of Exchange, the holder shall have priority in receiving his right (dues) from the value thereof.

Article 69. - Where several Bills of Exchange have been drawn by the same drawee on a consideration insufficient to accommodate them all, payment shall be made as follows:

- (1) The Bill with acceptance shall have priority over others; where several bills have been accepted, the Bill with a date of acceptance preceding those of the other bills shall have priority over others; where all bills have been accepted the consideration for payment shall be apportioned to the holders thereof each

according to the sum of his debt.

- (2) Where none of the bills bears the drawee's acceptance, priority shall be for the Bill for the payment of which the consideration was allocated; where the consideration has been allocated for payment of the several bills, the bill for which the consideration was in the first place allocated shall have priority over the others; where consideration for payment of the several bills had been allocated on the same date, the holders shall have the consideration apportioned among them each according to the sum of his debt.
- (3) Where none of the bills has been accepted by the drawee and no consideration for payment was provided for any such bills, regard shall be had to the order of maturity and the bill with the preceding date shall have priority over the others; if all bills mature on the same date the holders shall divide the consideration among themselves each according to the sum of his debt.

SECTION FOUR ACCEPTANCE OF A BILL OF EXCHANGE

Article 70. - The holder or possessor of a Bill of Exchange may, up to the date of its maturity, present it to the drawee at his domicile for acceptance.

Article 71. - (1) The drawer of a Bill of Exchange may stipulate therein that it be presented for acceptance at a specified date or may not specify a date at all.

(2) The drawer may stipulate that it be not presented for acceptance; however, the drawer may not make such stipulation if the Bill is due for payment by other than the drawee, at a place other than his domicile or after a certain specified date after sight.

IRAQ 1&2/85: LAW OF COMMERCE

(3) The drawer may further stipulate that it be not presented for acceptance before a stated date.

(4) Every indorser may stipulate that it be presented for acceptance on a specified date and may not specify a date, save when the drawer has stipulated that it must not be presented for acceptance.

Article 72. - (1) A Bill of Exchange which is due for payment on a certain specified period after sight shall be presented for acceptance within one year of its date.

(2) The drawer may abridge or extend such time limit.

(3) Any indorser may abridge such time limit.

Article 73. - A drawee may require that the Bill of Exchange be presented a second time for acceptance on the day following that of the first presentment; an allegation by interested persons that such demand was rejected shall not be allowed in defence unless such demand is specifically mentioned in the protest.

Article 74. - The holder of a Bill of Exchange presented for acceptance shall not be bound to surrender and deliver it to the drawee.

Article 75. - (1) The acceptance shall be written on the Bill of Exchange indicated by the word 'accepted' or any other word conveying the same meaning and be signed by the drawee.

(2) The mere subscription of the drawee's signature on the face of the Bill of Exchange shall be deemed to be an acceptance.

(3) Where the Bill of Exchange is due for payment after a certain specified period from sight or must be presented for acceptance according to a specific condition within a specified time limit, the date of acceptance shall be stated on the same day of the acceptance unless the holder requires that the date of acceptance should be shown on the day that the instrument was presented; when the date of acceptance is not stated the holder may, in order to safeguard his rights of recourse against the

IRAQ 1&2/85: LAW OF COMMERCE

indorsers and the drawer prove such lack of dating by a protest in due course.

Article 76. - (1) The acceptance must be unconditional; however, the drawee may restrict his acceptance to part of the value of the Bill of Exchange.

(2) When the form of acceptance contains a change in any of the other particulars of the instruments it shall be deemed to be a refusal of acceptance; nevertheless, the acceptor remains bound by the terms of his acceptance.

Article 77. - (1) Where the drawer stipulates on the Bill of Exchange a place for payment other than the drawee's domicile, without naming the person to whom payment should be made, the drawee who signifies his acceptance may specify the place of payment; but when he fails to do so the acceptor drawee shall be deemed to be bound to pay in the stipulated place of payment.

(2) When the Bill of Exchange is due for payment at the drawee's domicile he may stipulate in the form of acceptance an address of the place where payment must be effected.

Article 78. - (1) The drawee who accepts the Bill of Exchange shall be liable to pay the value thereof on the date of its maturity.

(2) Where the payment is not made, the holder, even though he be the drawer himself, may initiate direct action arising from the Bill of Exchange against the drawee acceptor claiming the recovery of all amounts which are recoverable under Articles 107 and 108 hereof.

Article 79. - (1) When the drawee strikes out the acceptance he has expressed on the Bill of Exchange before returning it, such expunction shall be deemed to be non-acceptance; unless the contrary is proved, the expunction is deemed to have taken place before returning the Bill of Exchange.

(2) However, the drawee who serves written notice on the

IRAQ 1&2/85: LAW OF COMMERCE

holder or any other signatory of his acceptance shall be bound by such acceptance in their regard.

SECTION FIVE
ACCOMMODATION BILL

Article 80. - Payment of the entire or part of the sum of the Bill of Exchange may be guaranteed by an accommodation party, even if he is a signatory thereof.

Article 81. - (1) The accommodation shall be by writing this word or any form indicating the same meaning on the Bill itself or on an attachment and be signed by the accommodation party.

(2) Such accommodation is presumed when the accommodation party signs on the face of the Bill of Exchange, save when the signature was subscribed by the drawee or drawer.

(3) The name of the accommodation party must be stated, otherwise the accommodation shall be deemed for the drawer.

Article 82. - (1) The accommodation party shall be liable in the same manner as the accommodated party; the liability of an accommodation party is valid even when the liability guaranteed is null and void for any cause whatsoever other than a defect in form.

(2) Where an accommodation party pays the amount of the Bill of Exchange, the rights arising therefrom shall devolve to him vis-a-vis the accommodated party and any party liable to the latter on the Bill.

Article 83. - An accommodation may be written on a separate paper showing the place wherein the accommodation was made, where the accommodation party shall be liable only to the party in whose favour the accommodation is made.

SECTION SIX
MATURITY OF BILLS OF EXCHANGE

Article 84. - (1) A Bill of Exchange may be made payable in any of the following forms:

- (a) on sight;
- (b) at a certain specified period after sight;
- (c) at a certain specified period after the date of the Bill;
- (d) on a certain specified day.

(2) A Bill of Exchange which stipulates other maturity dates than those provided for in sub-section (1) of this Article or successive dates of maturity shall be null and void.

Article 85. - (1) A Bill of Exchange which is due for payment on sight must be paid on presentment and must be presented for payment within one year of its date; the drawer may abridge or extend said time limit, while the indorsers may abridge it.

(2) The drawer may stipulate that a Bill of Exchange due for payment on sight must not be presented before the expiry of a certain specified term, in which case the time for presentment is computed from the date on which the time limit begins to run.

Article 86. - (1) For a Bill of Exchange payable at a fixed period after sight, the period begins to run from the date of the acceptance, if the Bill be accepted, and from the date of protesting, if the Bill be protested.

(2) When the Bill of Exchange is not protested, the acceptance when undated shall be deemed in regard to the acceptor to have taken place on the last day stipulated for presentment for acceptance in Article 72 hereof.

Article 87. - (1) Where a Bill of Exchange is payable one or more months after date or after sight it shall fall due on the corresponding date of the month during which it must be paid; in the absence of a corresponding date in the month during which the

IRAQ 1&2/85: LAW OF COMMERCE

Bill must be paid it shall fall due on the last day of such month.

(2) Where the Bill of Exchange is payable one or more months and one half month after date, or after sight, computation must begin to run with the full month.

(3) The expression 'one half of a month' means fifteen days and the middle of a month means the fifteenth day thereof.

Article 88. - (1) Where a Bill of Exchange is due for payment on a certain specified date in a country where the calendar is different from that of the country of issue, the date of maturity shall be determined according to the calendar of the country where payment is to be made.

(2) Where a Bill of Exchange is drawn between two countries having different calendars and is made payable after a certain period of time from its making, the date of issue shall be adjusted to the corresponding day of the calendar of the country of payment and the date of maturity shall be determined accordingly.

(3) The date of presentment of the Bill shall be determined according to the provisions of paragraph (2) of this Article.

(4) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply when it appears from a stipulation in, or the particulars of, the Bill that the intention was that different rules should be applied.

SECTION SEVEN
PAYMENT OF BILLS OF EXCHANGE

Article 89. - The holder of a Bill of Exchange made payable on a certain specified date, after a certain period after date or of sight, must present it for payment on the date of maturity or on either of the two work days following the said date.

IRAQ 1&2/85: LAW OF COMMERCE

Article 90. - (1) When a drawee pays off the Bill of Exchange, he may require the holder to surrender it with a discharge thereon duly signed.

(2) The holder may not refuse partial payment.

(3) In case of partial payment, the drawee may require such payment to be entered on the Bill itself and a receipt for the sum be issued.

(4) Any sum paid on account of the value of a Bill of Exchange constitutes a corresponding discharge to the drawer, indorsers and others who are liable thereon; the holder shall protest the outstanding amount.

Article 91. - (1) The holder of a Bill of Exchange may not be obligated to receive its value prior to maturity.

(2) Where the drawee pays the value of a Bill of Exchange prematurely he shall bear the relevant consequences.

(3) He who pays a Bill of Exchange on the date of maturity without valid objection is discharged of liability thereon, unless he has committed fraud or gross fault; he must satisfy himself of the regularity of the sequence of indorsements but is not bound to verify the authenticity or the signatures of the indorsers.

Article 92. - (1) Where the Bill of Exchange stipulates for payment in a foreign currency in Iraq, it should be in the currency of Iraq according to the rate of exchange prevailing on the date of maturity; when payment is not made on the said date, the holder is vested with an option to claim the amount of the Bill converted into the currency of Iraq, calculated at the rate of exchange of the Central Bank prevailing on the date of maturity or on that of payment.

(2) In all cases, a bill may not be transacted in violation of the laws of the Central Bank of Iraq, of Foreign Exchange and the Implementing Regulations.

IRAQ 1&2/85: LAW OF COMMERCE

Article 93. - (1) Where a Bill of Exchange is not presented for payment on the date of maturity, each one of the debtors thereon may deposit the amount thereof with the notary public in whose area lies the place of payment; the deposit is made at the holder's expense and responsibility.

(2) The notary public shall deliver to the depositor a receipt acknowledging the deposit of the sum deposited, the date of the Bill, its date of maturity and the name of the person in whose favour it was originally made.

(3) Where the holder claims payment from the debtor, the latter shall deliver the receipt of the deposit against the surrender of the Bill duly marked that payment of the value thereof had been effected pursuant to the receipt of deposit to which the holder's signature is subscribed; the holder, pursuant to said receipt, may realise the amount from the notary public; where the debtor fails to surrender the deposit receipt he shall be liable to pay the value of the Bill of Exchange to the holder.

Article 94. - (1) The payment of a Bill of Exchange may not be opposed except when it is lost, or the holder is adjudged bankrupt.

(2) Loss means loss of possession of the Bill of Exchange by an involuntary cause.

Article 95. - Where a non-accepted Bill of Exchange which is drawn in a set is lost, the person entitled to its value may claim payment on the strength of one of its other parts.

Article 96. - In the case of loss of the part bearing the acceptance of a Bill of Exchange drawn in a set, payment of the value thereof may not be claimed pursuant to any of its other parts except pursuant to an order of the court and subject to providing an accommodation party.

Article 97. - A person who has lost a Bill of Exchange, if he is unable to present any of its other parts, may obtain from the

IRAQ 1&2/85: LAW OF COMMERCE

court an order to have it paid, provided he proves his title thereto and produces an accommodation party.

Article 98. - (1) In the case of refusal to pay the value of a lost Bill of Exchange after claiming payment in conformity with Articles 96 and 97 hereof, the owner shall, in order to safeguard his rights, prove the refusal to pay by protesting on the day following that of the maturity date; such protest shall be served on the drawer and indorsers in the manner and within the time limits prescribed in Article 104 hereof.

The making of the protest within the time limit set in the preceding paragraph is a necessity even though the order of the court could not be obtained.

Article 99. - (1) The owner of a lost Bill of Exchange may obtain a copy thereof by referring to his preceding indorser, who shall be bound to assist him and allow him to use his name in referring to the previous indorser and so on up to the drawer.

(2) Every indorser shall write his indorsement on the copy of the Bill of Exchange delivered by the drawer after noting that it is a duplicate.

(3) Claiming payment on the strength of such copy may only be made pursuant to an order of the court provided an accommodation party is presented.

(4) All expenses shall be borne by the owner of the lost Bill of Exchange.

Article 100. - Payment on the date of maturity pursuant to an order from the court as mentioned in Articles 96, 97 and 99 hereof discharges the liability of the debtor.

Article 101. - The accommodation party referred to in Articles 96 and 97 hereof shall be discharged of liability after three years, when no claim is made or a suit is initiated before the courts.

SECTION EIGHT
RECOURSE

Article 102. - (1) If a Bill of Exchange is not paid to the holder on the date of maturity he may have recourse against the drawer, indorsers and other liable thereon.

(2) The holder of a Bill of Exchange is vested with a right of recourse before the maturity date in the following cases:

(a) in the case of total or partial non-acceptance;

(b) when the drawee is adjudged bankrupt whether he has accepted the Bill or not or when he suspends payment even when the suspension is not established by a judgement or in the case of ineffectual attachment of his property;

(c) in the case of bankruptcy of the drawer of a bill of exchange stipulating non-presentment for acceptance.

(3) Where recourse is exercised in accordance with subparagraphs (b) and (c) of (2) of this Article against the accommodation party, he may within three days of the date of the recourse apply to the court having jurisdiction over the area of his domicile for a period of grace to pay; where the court considers the application justifiable it shall determine in its order the period of grace, provided that it does not extend beyond the maturity date of the Bill of Exchange; such order shall not be subject to review.

Article 103. - (1) Refusal of acceptance or payment of the Bill of Exchange must be proved by a 'protest for non-acceptance' or 'protest for non-payment'.

(2) A non-acceptance protest must be made within the time limits set for presentment of the Bill of Exchange for acceptance; when the first presentment for acceptance in accordance with Article 73 hereof falls on the last day of the said time limit, the protest may be made on the following day.

(3) The non-payment protest of a Bill of Exchange which matures on a specified date or after a certain period from date

IRAQ 1&2/85: LAW OF COMMERCE

or from sight shall be made on one of the two work days following the maturity date. Where the Bill of Exchange is due for payment on sight, the protest of non-payment shall be made in conformity with the terms laid down in the preceding paragraph regarding the non-acceptance protest.

(4) The non-acceptance protest waives the need for presentment for payment and for the non-payment protest.

(5) Where the drawee suspends payment whether he has accepted the Bill of Exchange or not or where an unsuccessful attachment is made on his property, the holder may not have recourse against the accommodation party until he has presented the Bill of Exchange to the drawee for payment and after he has made a non-payment protest.

(6) Where the drawee is adjudged bankrupt, whether he has accepted the Bill of Exchange or not, or where the drawer of a Bill of Exchange stipulating non-presentment for acceptance is adjudged bankrupt, presentment of the bankruptcy judgement per se shall be sufficient ground for the holder to exercise his rights of recourse against the accommodation parties.

Article 104. - (1) The holder of a Bill of Exchange shall notify its drawer and his indorsers of the non-acceptance or non-payment thereof within the four work days following the protest or presentment for acceptance or for payment where it stipulates 'recourse without costs'. Each indorser shall, within the two work days following the receipt of the notice, notify his indorser that he has received such notice, giving him the names and addresses of the previous notifiers and so on from one indorser to another up to the drawer; the time limit for each indorser shall begin to run from the date of receipt of the notice.

(2) Where a signatory of the Bill of Exchange is served as stated in paragraph (1) of this Article, such notice must also be served on the accommodation party within the same time limit.

(3) Where any of the signatories of the Bill of Exchange has failed to state his address or wrote it illegibly, notice

IRAQ 1&2/85: LAW OF COMMERCE

will be sufficient when made on his preceding indorser.

(4) A party who is required to serve such notice shall do so in any manner, even by returning the Bill itself; he must prove that service of the notice was made within the prescribed time limit; said time limit is deemed to be observed when the notice is delivered to the Post Office during the said time limit by registered letter.

(5) A party who is required to send notice shall not forfeit his rights if he fails to do so within the aforesaid time limit but shall where necessary pay for the damages resulting from his negligence, provided the amount of such damages does not exceed the amount of the Bill of Exchange.

Article 105. - (1) The drawer, indorser or any accommodation party may, when exercising his right of recourse, exempt the holder of the Bill of Exchange from making a non-acceptance or non-payment protest, if he set his hand to a stipulation on the Bill of Exchange of 'recourse without costs' or 'recourse without protest' or any other expression having the same tenor.

(2) Said stipulation shall not exonerate the holder from presentment of the Bill of Exchange within the prescribed time limit nor from serving the prescribed notices; a party who claims that the holder failed to observe said time limits must prove that this was the case.

(3) Where the drawer has written the stipulation 'recourse without costs', its effects shall apply to all the signatories, but where it is written by an indorser or an accommodation party the effects shall apply to such party only.

(4) Where the drawer has himself made this stipulation when the holder nevertheless protests he alone shall bear the costs; but where the stipulation is made by an indorser or an accommodation party, recourse may be exercised against all the signatories for costs of the protest, when a protest is made.

Article 106. - (1) The persons liable on a Bill of Exchange are jointly liable thereon to the holder.

IRAQ 1&2/85: LAW OF COMMERCE

(2) The holder may claim from the parties liable either jointly or separately without regard to any order; a signatory of the Bill of Exchange who has paid its value may exercise this right against those liable to him.

(3) An action brought against any of the parties liable shall not bar action against the others, even when their liability was subsequent to the party who is sued in the first place.

Article 107. - (1) The holder of a Bill of Exchange may claim the following from any person against whom he has a right of recourse:

- (a) the principal sum of the non-accepted or non-paid Bill of Exchange, plus the agreed interest, where there is a stipulation to that effect;
- (b) interest computed at the legal rate from the maturity date;
- (c) the expenses of protest, notices and others.

(2) Where recourse is made before the maturity date of the Bill of Exchange a sum of its value is deductible equivalent to the rate of official discount on the date of recourse at the place wherein lies the holder's domicile.

Article 108. - He who has paid the value of a Bill of Exchange may claim from his accommodation parties:

- (a) the amount he has paid;
- (b) interest on the sum paid calculated at the legal rate from the date of payment;
- (c) the expenses incurred by him.

Article 109. - (1) A liable party who pays the sum of a Bill of Exchange may demand that the Bill, together with the protest and a receipt for the amount paid, be surrendered to him.

(2) An indorser who pays the Bill of Exchange may expunge his indorsement and the subsequent indorsements.

IRAQ 1&2/85: LAW OF COMMERCE

Article 110. - Where recourse is made after partial acceptance, he who has paid the non-accepted sum of the amount of the Bill may require an entry to be made on the Bill to that effect and a receipt delivered to him; furthermore, the holder shall deliver to him a true copy of the original bill certified by him and the protest to enable him to exercise his right of recourse against the others for the amount paid by him.

Article 111. - (1) On expiry of the time limits set for carrying on the following acts, the holder of a Bill of Exchange shall lose his rights that arise from the Bill in regard to the drawer, indorsers and other parties liable thereon (other than the acceptor):

- (a) presentment of the Bills of Exchange due for payment on sight or after a period from sight;
- (b) the non-payment or non-acceptance protest;
- (c) presentment of the Bill of Exchange for payment when it contains a provision of 'recourse without costs'.

(2) Nevertheless the drawer shall not take advantage of said loss of right unless he proves that he had a consideration for payment on the maturity date, in which case the only recourse open to the holder shall be against the drawee.

(3) When a Bill of Exchange is not presented for acceptance on the date stipulated by the drawer, the holder shall lose his right of recourse on grounds of non-acceptance and non-payment unless it is revealed from the words of the stipulation that the intention of the drawer was to relieve himself of accommodating acceptance.

(4) Where the indorser stipulates in his indorsement a date for presentment of the Bill for acceptance, he shall be the sole beneficiary of such stipulation.

Article 112. - (1) Where due to a force majeure a Bill of Exchange is not presented or protested within the prescribed time limits, the time limits shall be extended.

- (2) The holder of a Bill of Exchange shall immediately

IRAQ 1&2/85: LAW OF COMMERCE

serve notice on his indorser of the force majeure; such notice dated and signed by him shall be written on the Bill or allonge; such notices shall be served by the indorsees on their indorsers in the manner stipulated in Article 104 hereof.

(3) On cessation of the force majeure the holder of the Bill of Exchange shall without delay present it for acceptance or payment and when necessary protest it.

(4) Where the force majeure continues for more than thirty days calculated from the date of maturity, recourse may be made against the parties liable without the need for presentment of or protesting the Bill, except where a law grants a longer time limit for recourse.

(5) When a Bill of Exchange falls due on sight or at a specified period after sight, the thirty day time limit begins to run from the date on which the holder serves notice of the force majeure on his indorser, even when said date happens to be before the expiry of the time limits set for presentment of the Bill of Exchange; the sight period shall be added to the thirty day time limit, when the bill matures for payment on a date after sight.

(6) Matters related to the person of the holder of the Bill of Exchange or to any person delegated to present or to protest the Bill of Exchange shall not be deemed to be a force majeure.

Article 113. - The holder of a Bill of Exchange which is the subject of a non-payment protest may effect a provisional attachment on the movable property of the drawer, acceptor, indorser, accommodation party and others liable thereon, without the need to provide an accommodation party with due consideration being had of the relevant proceedings of the Law of Civil Procedure regarding provisional attachments.

Article 114. - (1) Unless otherwise provided, any person having a right of recourse against the other parties liable on the Bill of Exchange may recover his dues by drawing a fresh Bill of Exchange on one of his accommodation parties which shall fall due for payment on sight at the domicile of such accommodating party.

IRAQ 1&2/85: LAW OF COMMERCE

(2) The sum of a recourse Bill of Exchange shall cover the amounts set down in Articles 107 and 108 and in addition to any commissions and stamp duty.

(3) If the drawer of a recourse Bill of Exchange is himself the holder, its amount shall be determined on the same basis as that adopted in fixing the value of a sight Bill of Exchange drawn from the place where the original Bill of Exchange was payable at the place where the accommodation party's domicile lies.

(4) When the drawer of a recourse Bill of Exchange is an indorser, its amount shall be determined on the same basis as that used in fixing the value of a sight Bill of Exchange drawn from the place wherein lies the drawer's domicile of the accommodation party.

(5) In case of plurality of recourse Bills of Exchange the drawer or any indorser of the original Bill of Exchange may not be required to pay more than the price of one bill of recourse only.

**SECTION NINE
INTERVENTION**

Article 115. - (1) The drawer, indorser or accommodation party of a Bill of Exchange may name a person to intervene, accept and pay the Bill when necessary.

(2) Where the Bill of Exchange names an acceptor or payer, where necessary, of the value thereof at the place of its payment, the holder may not, prior to maturity, have recourse either against the party who has made the nomination nor his subsequent signatories, unless he has presented the Bill to the acceptor, or payer where necessary, named therein, who has refused acceptance, which refusal must be established by a protest.

Article 116. - (1) A bill may be accepted, or paid, by a person who intervenes for the honour of any party liable thereon who may

IRAQ 1&2/85: LAW OF COMMERCE

be the subject of recourse, due consideration being had of the provisions of the following Articles.

(2) Intervention may be by a third party, the drawee or any party liable thereon, but the drawee may not be the acceptor.

Article 117. - (1) Intervention may be effected in all cases where the holder of an acceptable Bill of Exchange has a right of recourse prior to the date of maturity.

(2) The holder may in other cases refuse to accept the intervention but when he accepts to intervene he shall forfeit his right of recourse prior to the maturity date against the person for whose honour he has intervened and his subsequent signatories.

Article 118. - The party who intervenes shall within the two work days following the intervention notify the person for whose honour he has intervened, on pain where necessary of being liable to pay damages resulting from his failure to do so, provided the amount of damages shall not exceed the value of the Bill of Exchange.

Article 119. - The acceptance of intervention shall be written on the Bill of Exchange itself, and signed by the intervener, and the name of the party for whose honour the intervention is made shall also be stated thereon; where the last particulars are not mentioned on the Bill, the intervention is deemed to have been made in favour of the drawer.

Article 120. - (1) The acceptor of intervention shall have the same liability to the holder and the subsequent indorsers of the person for whose honour the intervention is made as that of the latter.

(2) The party for whose honour the intervention is made and his accommodation parties may in spite of acceptance of the intervention require the holder to surrender the Bill, the

IRAQ 1&2/85: LAW OF COMMERCE

protest and the receipt, if any, in consideration for payment of the amount stipulated in Article 107 hereof.

Article 121. - (1) The Bill of Exchange may be paid by intervention in all cases where the holder is entitled on or before the date of maturity to recourse against those liable thereon.

(2) Such payment shall be effected by delivery of the entire sum payable by the part for whose honour the intervention is made.

(3) Payment shall be effected not later than the day which follows the last day on which non-payment may be protested.

Article 122. - (1) When the acceptors for honour or those names to pay the Bill of Exchange, when necessary, have a domicile at the place of payment the holder must present it to all of them for payment, and, if necessary, protest non-payment not later than the day following the last day of the time limit for protest.

(2) Failure to protest within the prescribed time limit discharges the liability of the party who was named the payer in case of necessity or the person for whose honour the Bill was accepted and the subsequent indorsers.

Article 123. - Where the holder of a Bill of Exchange refuses to receive the payment for honour, he shall lose his right of recourse against any party who would have been discharged by such payment.

Article 124. - (1) The payment for honour shall be established by writing a quitclaim on the Bill of Exchange stating the name of the party for whose honour payment is made; where the name is not stated in the quitclaim the payment for honour shall be deemed to have been made for the benefit of the drawer.

(2) The Bill of Exchange and the protest, if any, shall be delivered to the party who paid for honour.

IRAQ 1&2/85: LAW OF COMMERCE

Article 125. - (1) Where a Bill of Exchange has been paid for honour, the payer for honour is subrogated for and succeeds to all rights arising therefrom to the party for whose honour he pays and all parties liable to that party pursuant to the Bill; however, the payer for honour may not reindorse the Bill.

(2) The subsequent indorsers to the party for whose honour payment is made are discharged of liability.

(3) Where several persons offer to pay a Bill of Exchange for honour of different parties, the person whose payment will discharge the highest number of those liable on the Bill shall have the preference; where the rule is knowingly violated, the payer for honour loses his right of recourse against the parties who would have been discharged had this rule been observed.

Article 126. - (1) A Bill of Exchange may be drawn in a set.

(2) Each part of the set must be numbered and, failing which, each part shall be deemed to be a separate bill.

(3) The holder of a Bill of Exchange which does not stipulate that it is the only copy may ask for copies thereof at his expense; in order to obtain such copies he shall refer to his indorser who shall assist him to refer to the previous indorser and so on up to the drawer.

(4) Every such indorser shall enter his indorsement on and sign the new copies.

Article 127. - (1) Payment of a Bill of Exchange on the strength of any of its parts is a discharge of liability, even when this is not stipulated therein; such payment shall nullify the effect of the other parts; however, the drawee shall remain liable to pay the amount of any part accepted by him which he failed to recover.

(2) An indorser who has indorsed the parts of a Bill of Exchange to various persons, as well as his subsequent indorsers, shall be liable on the parts bearing their signatures which have not been recovered.

Article 128. - A person who sends any of the parts of a Bill of Exchange for acceptance shall show on the other parts the name of the person who has possession of such part and this latter shall surrender it to the lawful holder of any other part and if he refuses to surrender it the holder shall have no right of recourse unless he proves by a protest that:

- (a) the part sent to him for acceptance was not surrendered to him in spite of the fact that he requested surrender; and
- (b) acceptance or payment was not on the strength of another part.

SECTION TEN COPIES OF A BILL OF EXCHANGE

Article 129. - (1) The holder of a Bill of Exchange may make copies thereof.

(2) Each copy shall conform to the original including the indorsements and any other particulars recorded thereon; he shall write thereon 'the transcription from the original ends here'.

(3) The copy may be indorsed and have accommodation party in the same manner as on the original; the copy shall have the same effects as the original.

Article 130. - (1) The name of the holder of the original of the Bill of Exchange shall be stated on the copy; the holder must surrender the original to the lawful holder of the copy.

(2) Where the holder of the original refuses to surrender it, the holder of the copy shall not have a right of recourse against the indorsers or the accommodation parties thereof, unless he proves by protest that the original had not been surrendered to him on request.

(3) When after the last indorsement but before making the copy a note is written on the original state 'as of how indorsements shall be made on the copy only', or any other expression

IRAQ 1&2/85: LAW OF COMMERCE

having the same tenor, any indorsement made thereafter on the original shall be null and void.

SECTION ELEVEN ALTERATIONS

Article 131. - If an alteration is made to the text of the Bill of Exchange, the parties who sign after such alteration shall be liable according to the altered text, but the parties who signed prior to the said alteration shall be liable on the initial text.

SECTION TWELVE TIME LIMITATIONS

Article 132. - (1) No action shall be heard which arises from the Bill of Exchange against the acceptor after three years from the date of maturity.

(2) No action by the holder against the drawer or indorsers shall be heard after one year from the date of protest within the prescribed time limit or from the date of maturity where the Bill contains a stipulation 'recourse without costs'.

(3) When an indorser brings an action against another indorser or the drawer the action shall not be heard after six months from the day on which the indorser paid the Bill of Exchange or from the date on which action is brought against him.

CHAPTER 2 PROMISSORY NOTES

Article 133. - A promissory note shall contain the following particulars:

IRAQ 1&2/85: LAW OF COMMERCE

- (1) a stipulation of order or the expression 'promissory note' written in the text of the note in the language in which it is written;
- (2) an unconditional engagement to pay a certain sum of money;
- (3) the date of maturity;
- (4) the place of payment;
- (5) the name of the payee or to whose order it is payable;
- (6) the date and place of making the note; and
- (7) the name, signature and domicile of the maker of the note (drawer).

Article 134. - A note which does not contain any of the particulars set down in Article 133 shall be deemed to be an inchoate promissory note to order and shall not have effect as a negotiable instrument except in the following cases:

- (1) when the maturity date is not stated in the note, it shall be deemed to be payable on sight;
- (2) when the place of payment or the maker's domicile is not stated the place of making the note shall be deemed to be the place of payment and the maker's domicile;
- (3) when the place of making is not stated, it shall be deemed to have been made at the place shown next to the issuer's name.

Article 135. - (1) The stipulations pertaining to Bills of Exchange regarding capacity, indorsements, maturity, payment of value, recourse for non-payment, provisional attachments, protests, recourse by making a recourse Bill of Exchange, payment for honour, alterations and time limitations shall apply to promissory notes.

(2) A promissory note to order shall also be governed by the rules relevant to a Bill of Exchange due for payment at the domicile of a third party or at a place other than the drawee's domicile provided for in Article 43, the stipulation of interest mentioned in Article 44, the discrepancies in particulars of the

sum of money payable, provided for in Article 45, the effects resulting from the signature in the cases provided for in Articles 46 and 47 and from the signature of a person who is unauthorised or has acted ultra vires as mentioned in Article 49 hereof.

(3) The provisions of accommodation Bills of Exchange (Articles 80 et seq) shall also apply to promissory notes provided that where the name of the accommodating party is not mentioned in the inscription of the accommodation, the accommodation shall be deemed to be made for the benefit of the issuer of the note.

(4) In general the provisions relating to a Bill of Exchange shall apply also to notes, inasmuch as they are not inconsistent with the nature thereof.

Article 136. - (1) The issuer of a promissory note shall be liable in the same way as the acceptor of a Bill of Exchange.

(2) The promissory note which falls due after a certain specified period from sight shall be presented to the maker within the time limit provided for in Article 72 hereof for making an entry that it has been sighted; such entry must be dated and signed by the issuer.

(3) The term of sight begins to run from the date of such entry.

(4) When the issuer refuses to make said entry, such refusal shall be established by a protest; the after-sight term begins to run from the date of the protest.

CHAPTER 3 CHEQUES

Article 137. - The provisions pertaining to Bills of Exchange shall apply to cheques inasmuch as they are not inconsistent with the nature thereof.

IRAQ 1&2/85: LAW OF COMMERCE

Article 138. - A cheque shall contain the following particulars:

- (1) the word 'cheque' written in the text of the instrument in the language in which it is written;
- (2) an unconditional order to pay a certain sum of money;
- (3) the name of the person who should pay (the drawee);
- (4) the place of payment;
- (5) the date and place of making the cheque;
- (6) the name and signature of the maker of the cheque (the drawer).

Article 139. - An instrument which does not contain one of the particulars set down in Article 138 hereof shall be deemed to be an imperfect cheque and shall not have any effect as a negotiable instrument except in the following cases:

- (1) when the place of payment is not stated, the cheque shall be deemed due for payment at the place shown next to the drawee's name and, when several places are mentioned next to the drawee's name, the cheque shall be deemed to be payable at the place first stated; when the place of payment is not stated as aforesaid, it shall be deemed to be payable at the place wherein lies the head office of the drawee;
- (2) when the place of drawing is not stated, the cheque shall be deemed to have been made at the place shown next to the drawer's name.

Article 140. - Cheques issued and payable in Iraq may be drawn only on a bank; instruments drawn as cheques on other than a bank shall not be deemed to be valid cheques.

Article 141. - (1) A cheque may not be issued unless the drawer has, at the time of drawing the cheque, with the drawee, money (cash consideration) of which he can dispose by cheque pursuant to an express or implied agreement; however, the non-availability of a consideration for payment shall not affect the validity of the cheque.

IRAQ 1&2/85; LAW OF COMMERCE

(2) The drawer of a cheque or person ordering another to draw a cheque on his behalf shall deliver sufficient funds to pay such cheque; however, a party who draws on behalf of another shall be held personally liable to the indorsers and the holder and no others, for making available the consideration for payment.

(3) In the case of denial, the drawer alone must prove that the drawee of the cheque had at the time of its making enough funds to pay it; if he fails to do so he shall be liable to pay it even when he protests after the prescribed time limits.

Article 142. - (1) A cheque is not susceptible of acceptance; an acceptance written on a cheque shall be void.

(2) However, the drawee may confirm by cheque; such confirmation indicates the availability with the drawee of a consideration on the date of confirmation to pay the sum of the cheque; the drawee's signature on the face of the cheque shall be deemed to be a confirmation.

(3) When required by the drawer or holder to confirm a cheque the drawee may not refuse to do so when he has sufficient consideration to pay its value.

(4) The consideration for payment of a confirmed cheque shall remain frozen with and at the responsibility of the drawee for the holder until the expiry of the time limits for presentment for payment.

Article 143. - (1) A cheque may be made payable to:

- (a) a named person with an express provision 'to order' or without it;
- (b) a named person with the stipulation 'not to order' or any other expression of the same tenor;
- (c) the bearer.

(2) A cheque drawn to a named person with the stipulation 'or to bearer' or any other expression of the same tenor shall be construed to be a cheque 'to bearer'; where the name of the