Negotiable Instruments Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of regulating negotiable instrument acts, protecting the lawful rights and interests of parties involved in negotiable instrument transactions, maintaining social and economic order, and promoting the development of the socialist market economy.

Article 2 — This Law shall apply to negotiable instrument acts within the territory of the People's Republic of China. "Negotiable instruments" as used in this Law means bills of exchange, promissory notes and cheques.

Article 3 — Negotiable instrument acts shall comply with the provisions of laws and administrative regulations and shall not harm the public interest.

Article 4 — A person who signs a negotiable instrument shall, in accordance with the matters stated on the instrument, bear the liability for the instrument. Persons who hold a negotiable instrument shall exercise their instrument rights in accordance with the matters stated on the instrument. Persons other than the holder who endorse, guarantee or accept a bill of exchange shall bear the instrument liability in accordance with the matters stated on the instrument.

Article 5 — An instrument right holder may authorize an agent to sign the instrument and shall clearly indicate the agency relationship on the instrument. Where an agent without authority signs an instrument in the name of the principal, the agent shall bear the instrument liability. Where an agent acts beyond the scope of authority, the agent shall bear the instrument liability for the part exceeding the authority.

Article 6 — Where a person without civil capacity or with limited civil capacity signs an instrument, the signature shall be void, but this shall not affect the validity of other signatures.

Article 7 — The signature on an instrument shall be the signature, seal, or both signature and seal of the party concerned. The signature on an instrument by a legal person or other entity using an instrument shall be the seal of the legal person or the entity plus the signature or seal of its legal representative or its authorized agent. A signature on an instrument shall be the name of the party concerned.

Article 8 — The amount of an instrument shall be stated in both Chinese characters and Arabic numerals, and the two must be identical. If the two are not identical, the instrument shall be void.

Article 9 — The matters stated on an instrument shall be in compliance with the provisions of this Law. The amount, date and name of the payee of an instrument must not be altered. An instrument with any of these items altered shall be void. The alteration of other matters on an instrument shall be signed by the original recorder and evidenced.

Article 10 — The issuance, acquisition and endorsement of an instrument shall follow the principle of good faith and shall be based on a genuine transaction relationship and a creditor-debtor relationship. The acquisition of an instrument must be for consideration, which shall be the price corresponding to the obligations of both parties under the instrument.

Article 11 — Where an instrument is acquired without consideration due to taxation, inheritance or donation, the enjoyment of the instrument rights shall not exceed the rights of the predecessor in title.

Article 12 — Where an instrument is acquired by fraud, theft or coercion, or where the holder knowingly acquires an instrument under such circumstances, the holder shall not enjoy the instrument rights. Where a holder acquires an instrument that is not in compliance with the provisions of this Law due to gross negligence, the holder shall also not enjoy the instrument rights.

Article 13 — A debtor of an instrument shall not raise a defense against the holder based on the defenses available against the issuer or against the holder's predecessor in title, unless the holder acquires the instrument with knowledge of the existence of the defense. A debtor of an instrument may raise a defense against the holder who has a direct creditor-debtor relationship with the debtor and who fails to perform the

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agreed obligations.

Article 14 — The matters stated on an instrument shall be truthful, and no forgery or alteration is allowed. A person who forges or alters a signature or seal on an instrument or other matters stated on the instrument shall bear legal liability. Where there is a forged or altered signature on an instrument, the genuine signatures on the instrument shall not be affected. Where an instrument has altered matters other than those specified in Article 9 of this Law, the persons who signed the instrument before the alteration shall be liable for the original recorded matters; the persons who signed the instrument after the alteration shall be liable for the matters stated after the alteration; and where it is impossible to determine whether the signature was made before or after the alteration, it shall be deemed to have been made before the alteration.

Article 15 — Where an instrument is lost, the person who lost the instrument may promptly notify the drawee of the bill of exchange or the drawee of the cheque of the loss, or apply to the basic-level people's court in the place where the drawee or the person liable for payment is located for a public announcement to assert the claim of right, or initiate an action in a people's court.

Article 16 — The exercise and preservation of instrument rights by the holder against an instrument debtor shall be carried out at the business premises of the party concerned, or at the domicile or habitual residence of the party concerned if there is no business premises.

Article 17 — The limitation period for instrument rights shall be as follows: (1) For the holder's claim against the issuer and acceptor of a bill of exchange, two years from the date of maturity of the instrument; for a sight bill of exchange or a promissory note, two years from the date of issuance. (2) For the holder's claim against the issuer of a cheque, six months from the date of issuance. (3) For the holder's right of recourse against the prior endorsers, six months from the date of dishonor or the date of maturity. (4) For the endorser's right of recourse against the prior parties, three months from the date of discharge of the debt or from the date on which the endorser is sued.

Article 18 — Where a holder loses the instrument right due to the expiration of the limitation period or due to defects in the matters stated on the instrument, the holder shall still enjoy civil rights and may request the issuer or acceptor to return the benefit corresponding to the instrument amount that has not been paid.

Chapter II — Bills of Exchange

Section 1: Issuance

Article 19 — A bill of exchange is an instrument issued by the issuer, instructing the drawee to pay unconditionally a specified amount of money to the payee or holder at sight or on a specified date. Bills of exchange are divided into bank bills of exchange and commercial bills of exchange.

Article 20 — Issuance means the act of the issuer by which the issuer signs and completes an instrument and delivers it to the payee.

Article 21 — The issuer of a bill of exchange must have a genuine entrustment relationship for payment with the drawee and must have a reliable source of funds for the payment of the bill of exchange. No bill of exchange shall be issued without consideration to defraud funds from the bank or other parties to the instrument.

Article 22 — A bill of exchange shall state the following matters: (1) the Chinese characters for "bill of exchange"; (2) an unconditional instruction to pay; (3) a specified amount; (4) the name of the drawee; (5) the name of the payee; (6) the date of issuance; and (7) the signature of the issuer. A bill of exchange lacking any of the above matters shall be void.

Article 23 — The date of payment, the place of payment and the place of issuance of a bill of exchange may be stated on the instrument. If not stated, it shall be determined in accordance with the provisions of this Law. If the date of payment is not stated on the instrument, the bill of exchange shall be deemed payable at

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sight. If the place of payment is not stated, the business premises, domicile or habitual residence of the drawee shall be the place of payment. If the place of issuance is not stated, the business premises, domicile or habitual residence of the issuer shall be the place of issuance.

Article 24 — A bill of exchange may state other matters in addition to those specified in this Law, but such matters shall not have the effect of a bill of exchange.

Article 25 — The date of payment of a bill of exchange may be stated in one of the following forms: (1) payable at sight; (2) payable at a fixed date; (3) payable at a fixed period after issuance; (4) payable at a fixed period after sight. The date of payment specified in the preceding paragraph shall be the date of maturity of the bill of exchange.

Article 26 — After issuing a bill of exchange, the issuer shall bear the liability of guaranteeing the acceptance and payment of the instrument. During the period when the issuer has not obtained payment from the drawee, the issuer may request the holder to return the bill of exchange.

Section 2: Endorsement

Article 27 — A holder may transfer the instrument rights to another person or authorize another person to exercise certain instrument rights. When an instrument is issued, if the words "non-transferable" are stated, the instrument shall not be transferred. The exercise of the rights specified in the first paragraph of this Article shall be effected by endorsement and delivery of the instrument. "Endorsement" means the act of recording relevant matters on the back of the instrument or on an allonge and signing.

Article 28 — Where an instrument cannot accommodate all the necessary endorsement records, an allonge may be attached to the instrument. The first record on the allonge shall be signed and sealed at the joint between the instrument and the allonge.

Article 29 — An endorsement shall be signed by the endorser and the date of endorsement shall be stated. Where an endorsement does not state a date, it shall be deemed to have been made before the maturity of the instrument.

Article 30 — When an instrument is endorsed for transfer or for authorizing another person to exercise certain instrument rights, the name of the endorsee shall be stated.

Article 31 — Endorsements shall be continuous. A holder shall prove his or her instrument rights by the continuity of the endorsements. Where an instrument is transferred by means other than endorsement, legal evidence shall be provided to prove the holder's instrument rights. "Continuity of endorsements" as used in the preceding paragraph means that the first endorser on the instrument is the payee, the last endorsee is the holder, and each subsequent endorser on the instrument is the endorsee of the immediately preceding endorsement.

Article 32 — Where an instrument is endorsed for transfer, the subsequent party shall be guaranteed the rights under the instrument by the prior party. The holder shall enjoy the instrument rights in accordance with the contents of the instrument.

Article 33 — An endorsement must not have conditions attached. Where conditions are attached to an endorsement, the conditions shall not have the effect of a bill of exchange. Where a part of the amount of an instrument is endorsed for transfer, or the amount of the instrument is endorsed for transfer to two or more persons respectively, the endorsement shall be void.

Article 34 — Where an endorser states "non-transferable" on the instrument, and the endorsee further endorses the instrument for transfer, the original endorser shall not bear the liability of guarantee against the endorsees of the subsequent endorsement.

Article 35 — "Endorsement by way of pledge" means an endorsement stating the word "pledge" on the instrument. The endorsee may exercise the instrument rights when exercising the right of pledge in

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accordance with law. "Entrusted collection endorsement" means an endorsement stating the word "entrusted collection" on the instrument. The endorsee may exercise the entrusted instrument rights on behalf of the endorser, but may not endorse the instrument for transfer.

Article 36 — An instrument shall not be endorsed for transfer after it has been dishonored, or after the time limit for presentment for payment has expired. If it is endorsed for transfer, the endorser shall bear the instrument liability.

Article 37 — An endorser shall, through endorsement, bear the liability of guaranteeing the subsequent holder's ability to obtain the payment of the instrument. When the holder fails to obtain payment upon exercising the right of recourse in accordance with law, the endorser shall pay the amount of the instrument and bear other relevant expenses.

Section 3: Acceptance

Article 38 — Acceptance means the act by which the drawee of a bill of exchange agrees to pay the amount of the bill of exchange on the date of maturity and records such agreement on the instrument.

Article 39 — For a bill of exchange payable at a fixed date or at a fixed period after issuance, the holder shall present the bill of exchange to the drawee for acceptance before the date of maturity. Presentment for acceptance means the act by which the holder presents the bill of exchange to the drawee and requests the drawee to promise payment.

Article 40 — For a bill of exchange payable at a fixed period after sight, the holder shall present the bill of exchange to the drawee for acceptance within one month from the date of issuance. For a bill of exchange not presented for acceptance within the prescribed time limit, the holder shall lose the right of recourse against the prior parties. However, sight bills of exchange need not be presented for acceptance.

Article 41 — When the holder presents the bill of exchange to the drawee for acceptance, the drawee shall accept or refuse the bill of exchange within three days from the date of receipt of the bill of exchange presented for acceptance. When the drawee accepts the bill of exchange, the drawee shall sign the words "accepted" and the date of acceptance on the front of the bill of exchange. If the date of acceptance is not stated, the last day of the period specified in the first paragraph of this Article shall be the date of acceptance.

Article 42 — An unconditional acceptance shall be effected for the payment of the bill of exchange. If conditions are attached to the acceptance, it shall be deemed a refusal of acceptance.

Article 43 — The drawee shall, after accepting the bill of exchange, bear the liability for payment at the time of maturity.

Article 44 — When the drawee accepts a bill of exchange, the drawee must not demand consideration from the holder.

Section 4: Guarantee

Article 45 — The obligation under a bill of exchange may be guaranteed by a guarantor. The guarantor shall be a person other than the debtor of the instrument.

Article 46 — When guaranteeing a bill of exchange, the guarantor shall state the following matters on the instrument or on an allonge: (1) the word "guaranteed"; (2) the name and domicile of the guarantor; (3) the name of the guarantee; (4) the date of guarantee; and (5) the signature of the guarantor.

Article 47 — If the name of the guarantee is not stated in the guarantee, the acceptor shall be the guarantee for an accepted bill of exchange, and the issuer shall be the guarantee for an unaccepted bill of exchange. If it is impossible to determine whether the bill of exchange has been accepted or not, the issuer shall be deemed the guarantee.

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Article 48 — A guarantee must not have conditions attached. If conditions are attached, this shall not affect the liability of guarantee under the bill of exchange.

Article 49 — The guarantor shall bear joint and several liability with the guarantee to the holder. The guarantee shall remain valid even if the obligation of the guarantee under the bill of exchange is void, unless the guarantee is void due to defects in the matters stated on the instrument.

Article 50 — Where the guarantee has been discharged, the guarantor may exercise the right of recourse against the guarantee and the prior parties thereof.

Section 5: Payment

Article 51 — The holder shall present the bill of exchange to the drawee for payment in accordance with the following time limits: (1) for a bill of exchange payable at sight, within one month from the date of issuance; (2) for a bill of exchange payable at a fixed date, at a fixed period after issuance or at a fixed period after sight, within 10 days from the date of maturity. Where the holder fails to present the bill of exchange for payment within the prescribed time limit, after making an explanation, the acceptor or the drawee shall still bear the liability for payment against the holder.

Article 52 — When the holder presents the bill of exchange for payment in accordance with the provisions of the preceding Article, the drawee shall pay the amount in full on the same day.

Article 53 — When the drawee pays in accordance with law, all the instrument debtors shall be discharged from liability.

Section 6: Recourse

Article 54 — When a bill of exchange is dishonored upon maturity, or prior to maturity the possibility of payment is obviously insufficient, the holder may exercise the right of recourse against the endorsers, the issuer and other debtors of the instrument. The holder may exercise the right of recourse without following the order of the debtors of the instrument. The holder may exercise the right of recourse against one, several or all of the debtors of the instrument.

Article 55 — A holder who exercises the right of recourse may claim the following: (1) the amount of the bill of exchange that has been dishonored; (2) interest on the amount of the bill of exchange calculated at the interest rate prescribed by the People's Bank of China from the date of maturity or the date of presentment for payment to the date of discharge; and (3) expenses incurred in obtaining the relevant notice of dishonor and the notice of recourse.

Article 56 — The amount obtained by recourse by the person against whom recourse is exercised may include: (1) the total amount paid that has been discharged; (2) interest on the amount specified in the preceding paragraph calculated at the interest rate prescribed by the People's Bank of China; and (3) expenses incurred in issuing the notice.

Chapter III — Promissory Notes

Article 57 — A promissory note is an instrument issued by the issuer undertaking to pay unconditionally a specified amount of money to the payee or holder at sight. "Promissory note" as used in this Law means a bank promissory note.

Article 58 — The issuer of a promissory note must have a reliable source of funds for the payment of the promissory note and guarantee payment.

Article 59 — A promissory note shall state the following matters: (1) the Chinese characters for "promissory note"; (2) an unconditional undertaking to pay; (3) a specified amount; (4) the name of the payee; (5) the date of issuance; and (6) the signature of the issuer. A promissory note lacking any of the above matters shall be void.

Article 60 — If the place of payment or the place of issuance is not stated on the promissory note, the business premises of the issuer shall be the place of payment or the place of issuance.

Article 61 — The time limit for the holder to present the promissory note to the issuer for payment shall be two months from the date of issuance.

Article 62 — Where the holder fails to present the promissory note for payment within the prescribed time limit, the holder shall lose the right of recourse against the prior parties other than the issuer.

Article 63 — The provisions of this Law relating to bills of exchange shall apply to the issuance, endorsement, guarantee, payment and recourse of promissory notes, unless otherwise provided in this Chapter.

Chapter IV — Cheques

Article 64 — A cheque is an instrument issued by the issuer, instructing a bank or other financial institution handling cheque deposit business to pay unconditionally a specified amount of money to the payee or holder at sight.

Article 65 — The issuance of a cheque by the issuer must be based on a genuine entrustment relationship, and the issuer must have sufficient funds deposited with the drawee before a cheque may be issued. Cheques issued without sufficient funds deposited with the drawee to pay the cheque amount are dishonored cheques, and the issuance of dishonored cheques without sufficient funds is prohibited.

Article 66 — A cheque shall state the following matters: (1) the Chinese characters for "cheque"; (2) an unconditional instruction to pay; (3) a specified amount; (4) the name of the drawee; (5) the date of issuance; and (6) the signature of the issuer. A cheque lacking any of the above matters shall be void.

Article 67 — The amount of a cheque may be supplemented by the issuer's authorization before use. Cheques without a specified amount shall not be used.

Article 68 — The name of the payee may not be stated on a cheque. If the name of the payee is not stated, the bearer may add the payee's name with the issuer's authorization. If the place of payment is not stated on the cheque, the business premises of the drawee shall be the place of payment. If the place of issuance is not stated, the business premises, domicile or habitual residence of the issuer shall be the place of issuance.

Article 69 — The amount stated on a cheque shall not exceed the actual amount of the drawee's deposit with the drawee at the time of payment. If the issuer issues a cheque with an amount exceeding the actual amount of the issuer's deposit with the drawee at the time of payment, the cheque shall be a dishonored cheque. The issuance of dishonored cheques is prohibited.

Article 70 — The issuer of a cheque must not issue a cheque with a date of issuance later than the actual date of issuance. The issuance of post-dated cheques is prohibited.

Article 71 — The holder shall present the cheque for payment within 10 days from the date of issuance. For cheques used in a different place, the time limit for presentment for payment shall be separately prescribed by the People's Bank of China. Upon expiration of the time limit for presentment for payment, the drawee may refuse payment; if the drawee refuses payment, the issuer shall still bear the instrument liability against the holder.

Article 72 — After the drawee pays the amount of the cheque in accordance with law, all the instrument debtors shall no longer bear the instrument liability against the drawee.

Article 73 — The provisions of this Law relating to bills of exchange shall apply to the issuance, endorsement, guarantee, payment and recourse of cheques, unless otherwise provided in this Chapter.

Chapter V — Application of Foreign-Related Negotiable Instruments

Article 74 — This Law shall apply to the determination of the capacity for civil acts of the debtor of an instrument. Where a debtor of an instrument is deemed a person without civil capacity or with limited civil capacity in accordance with the law of his or her home country, but is deemed a person with full civil capacity in accordance with the law of the place of the act, the law of the place of the act shall apply.

Article 75 — The law of the place of issuance shall apply to the matters to be stated on a bill of exchange or a promissory note when it is issued. The law of the place of issuance shall apply to the matters to be stated on a cheque when it is issued, provided that the law of the place of payment may also apply upon the agreement of the parties involved.

Article 76 — The law of the place of the act shall apply to the endorsement, acceptance, payment and guarantee of an instrument.

Article 77 — The law of the place of payment shall apply to the time limit for exercising the right of recourse on an instrument.

Article 78 — The law of the place of issuance or the law of the place of payment shall apply to the time limit for presentment for payment and the time limit for issuing relevant notices of dishonor.

Article 79 — The law of the place of payment shall apply to the formalities that a holder shall fulfill when an instrument is lost.

Article 80 — Where the provisions of international treaties concluded or acceded to by the People's Republic of China differ from those of this Law, the provisions of the international treaties shall apply, except for those provisions on which the People's Republic of China has made reservations. International practice may apply to matters on which this Law and international treaties concluded or acceded to by the People's Republic of China are silent.

Chapter VI — Legal Liability

Article 81 — Whoever commits any of the following negotiable instrument frauds shall be pursued for criminal liability in accordance with law: (1) forging or altering an instrument; (2) knowingly using a forged or altered instrument; (3) issuing a dishonored cheque or a bill of exchange without a reliable source of funds with the intent to defraud property; (4) issuing an instrument without a genuine transaction relationship and creditor-debtor relationship, and without consideration, to defraud the funds of the drawee; (5) falsely stating the name of another person on an instrument or using another person's seal without authorization by an agent to defraud property; or (6) a guarantor of an instrument knowingly signing a guarantee together with the principal for the purpose of fraud.

Article 82 — Where a staff member of a financial institution negligently causes losses to the parties involved through the acceptance, payment or guarantee of an instrument that has not been issued, endorsed or guaranteed in compliance with the provisions of this Law, the financial institution and the directly responsible personnel shall bear liability in accordance with law.

Article 83 — Where the payment of an instrument is intentionally delayed by the drawee of an instrument, causing losses to the holder or the issuer, the drawee shall bear liability for compensation in accordance with law.

Article 84 — Where the provisions of this Law are violated by acts other than those provided for in this Chapter, causing losses to others, civil liability shall be borne in accordance with law.

Chapter VII — Supplementary Provisions

Article 85 — The calculation of various time limits and the method of payment under this Law shall be governed by the relevant provisions of the General Principles of the Civil Law of the People's Republic of China.

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Article 86 — The administrative measures for the administration of instruments shall be separately formulated by the People's Bank of China in accordance with this Law and submitted to the State Council for approval before implementation.

Article 87 — The format of the promissory notes and cheques used by banks shall be uniformly prescribed by the People's Bank of China.

Article 88 — This Law shall take effect as of January 1, 1996.

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