THE LAW REFORM COMMISSION OF HONG KONG

REPORT ON

BILLS OF EXCHANGE

(TOPIC 6)

TERMS OF REFERENCE

WHEREAS

On 15 January 1980 His Excellency the Governor of Hong Kong Sir Murray MacLehose, GBE, KCMG, KCVO in Council directed the establishment of the Law Reform Commission of Hong Kong and appointed it to report upon such of the laws of Hong Kong as might be referred to it for consideration by the Attorney General and the Chief Justice;

On 5 October 1981 the Honourable the Attorney General and the Honourable the Chief Justice referred to this Commission for consideration a Topic in the following terms:

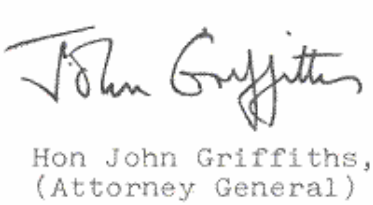
> *"Commercial Law - Bills of Exchange*
>
> *(1) Should the provisions of section 26 of the Bills of Exchange Ordinance (Cap. 19) relating to persons signing bills of exchange as agents or in representative capacities be changed, and, if so, in what way?*
>
> *(2) Should the provisions of section 49(1) of the Bills of Exchange Ordinance (Cap. 19) relating to the time within which notice of dishonour of a bill of exchange must be given, be changed, and, if so, in what way?";*

On 5 October 1981 the Commission appointed a sub-committee with the Hon F.K. Hu, J.P. as Chairman to research, consider and then advise it upon the said matters;

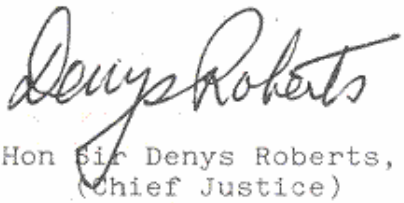
On 20 May 1982 the sub-committee reported to the Commission, and the Commission considered the topic at meetings on 21 May, 2 July, 6 August and 29 October 1982;

We have made in our report recommendations which we consider will meet the problems described therein;

NOW DO WE THEREFORE THE UNDERSIGNED MEMBERS OF THE LAW REFORM COMMISSION OF HONG KONG PRESENT THE REPORT OF THE LAW REFORM COMMISSION OF HONG KONG ON SECTIONS 26 AND 49 OF THE BILLS OF EXCHANGE ORDINANCE:



Hon John Griffiths, QC
(Attorney General)



Hon Sir Denys Roberts, KBE
(Chief Justice)

Hon G.P. Nazareth, OBE, QC
(Law Draftsman)

Hon T.S. Lo, CBE, JP

Hon HU Fa-kuang, JP

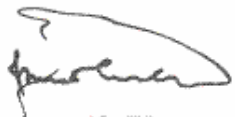
Hon Mrs. Selina Chow, JP

Dr. Philip Kwok, JP

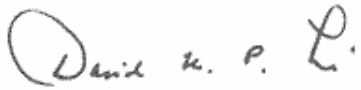
Dr. Ambrose King

Andrew Li, Esq.

Professor Peter Willoughby



Brian McElney, Esq., JP



David Li, Esq.

Robert Allcock, Esq.

Hon Mr Justice Fuad
(Justice of Appeal)

Dated this 29th day of October 1982

THE LAW REFORM COMMISSION OF HONG KONG

REPORT ON

BILLS OF EXCHANGE

INDEX

Frontispiece		i	
Terms of Reference		ii	
Signature Page		iii	
Index		iv-vi	
		Page	***Paragraph***
I.	**Introduction**	1	1.1 – 1.5
II.	**Summary of work**	1	2.1 – 2.2
III.	**The Law in Hong Kong**	2	3.1 – 3.24
Section 49(1) of the Bills of Exchange Ordinance (Cap. 19)		2	3.2
(a)	Duty to give notice of dishonour	3	
(b)	To whom to be given	3	
(c)	When to be given	3	
(d)	Different places	3	
(e)	Practical implications	3	
Liability of Signatories of Cheques		4	3.3 – 3.7

Section 26 of the Bills of Exchange Ordinance (Cap. 19)	4	3.8
The Case Law in Hong Kong	5	3.9 – 3.24
The Oriental Gloves case	5	3.12 – 3.13
The Blooming Textile case	6	3.14 – 3.15
The Maytex case	7	3.16 – 3.23
Conclusion on the Case Law	9	3.24
IV. Banking and clearing house practice in Hong Kong	9	4.1 – 4.7
Cheque Forms	9	4.2 – 4.4
(a) Standard Company Cheques	9	
(b) Overprinted Cheques	10	
(c) Specially Printed Cheques	10	
Bank's Advice to Companies	10	4.5
The Practice of American Corporations and Banks	10	4.6
The Hong Kong Clearing House	11	4.7
(a) Cheque Clearing Schedule	11	
(b) Data on Signatures on Company Cheques	11	
V. Comparable jurisdictions	12	5.1 – 5.11
VI. Our approach	14	6.1 – 6.3
VII. Our conclusions	15	7.1 – 7.24
Notice of Dishonour	15	7.1 – 7.3
Signatories to Cheques	15	7.4 – 7.24
Non-Company Cheques	15	7.4

	Company Cheques	15	7.5 – 7.24
VIII.	**Recommendations**	20	8.1 – 8.4
IX.	**Short summary in the Chinese language**	21	
Appendix 1			
Acknowledgements		23	
Appendix 2			
Materials		26	
Appendix 3			
Sections 33 and 93 of the Companies Ordinance (Cap 32)		33	
Appendix 4			
Letter describing the statutory laws of the United States		35	
Appendix 5			
Hong Kong Bankers Clearing House Time Table		38	

I. Introduction

1.1 The law merchant of England has known the bill of exchange for centuries. Cheques, as we know them, have been in commercial use for over two hundred years. A cheque (other than a cash cheque) is a bill of exchange drawn on a banker payable on demand. Hong Kong, settled as an entrepot in 1842 and now the third largest banking centre in the world, has over 125 licensed banks and over 340 registered deposit-taking companies, being in most cases the branches or subsidiaries of leading international banks from most of the countries in the developed financial world. More than 250,000 cheques are cleared each day of business – over sixty million a year. Of these, roughly twelve million are "company cheques", on one third of which the authorised signatories may risk personal liability.

1.2 Against this background, two specific problems have been drawn to our attention. First, following conflicting decisions in the District Court, the Full Court of Hong Kong in 1975 held on appeal that where the authorised signatory of a corporate drawer failed on a "company cheque" to add words clearly indicating that he had signed in a representative capacity, then the signatory could not avail himself of the provisions of Section 26(1) of the Bills of Exchange Ordinance and was personally liable on the cheque (Cheung Yiu-wing v. Blooming Textile Limited (1975) HKLR 388).

1.3 The question then arises as to whether in such circumstances, when the cheque is dishonoured by the company, it is commercially desirable or equitable for the authorised signatory to be personally liable in circumstances where perhaps both the payee and himself would have appreciated, if they had paused to think at the time of signing, that he was only involved as an officer or employee of the company, and not in his personal capacity; or whether in such circumstances it is the payee who should be made to bear the loss.

1.4 Secondly, it has been suggested that a strict application of the rules governing time limits for giving notice of dishonour of a bill of exchange, and particularly Section 49 rule (1) of the Bills of Exchange Ordinance, is capable of defeating the genuine claims of bona-fide holders for value.

1.5 As a matter of convenience we deal later with these problems in reverse order, because of the difference in their complexity.

II. Summary of work

2.1 The sub-committee, formed on 5 October 1981, considered as its terms of reference the questions referred for consideration to the Commission. It was naturally anxious to discover the practice in Hong Kong and also abroad so far as the superscription of wording on company cheques was concerned, and the procedures by which cheques were cleared, met or dishonoured in Hong Kong; to this end it consulted the Hong Kong Association of Banks, the Hong Kong General Chamber of Commerce, the

Clearing House of the Hong Kong Association of Banks, and individual bankers, businessmen and lawyers. In particular, because of the important role they play in Hong Kong, the sub-committee sought views on Chinese commercial practice, and American banking law and practice.

2.2 To discover the legal situation, the sub-committee has collected and reviewed the statutes and case-law from both Hong Kong and the major common-law countries; a full list of materials is to be found in Appendix 2. It has also approached and consulted a number of those in Hong Kong and elsewhere knowledgeable about these matters from both legal and practical aspects, including leading commercial judges and lawyers, the English Law Commission, and the officers of the Attorneys General of Singapore, Malaysia and Australia. Set out in Appendix 1 is a full list of those who have helped the sub-committee with information or advice.

III. The law in Hong Kong

3.1 The Bills of Exchange Ordinance (Chapter 19, Laws of Hong Kong) was enacted in 1885; it was based entirely on the English Bills of Exchange Act 1882. It has since by amendment faithfully mirrored all changes in the English legislation, the last major amendment being the insertion in 1960 of the provisions of the English Cheques Act 1957: sections 83-88. Just as the Bills of Exchange Act in England was intended to be a codification of commercial law, so the Hong Kong Ordinance preserved "the rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of the Ordinance" (section 102(2)). Similarly, the Ordinance provides that it shall not affect the provisions of any Ordinance relating to "joint-stock banks or companies" (section 102(3)(b)).

Section 49(1) of the Bills of Exchange Ordinance (Cap. 19)

3.2 The law relating to notice of dishonour of a bill of exchange is contained in sections 48, 49 and 50 of Cap. 19. Of particular relevance is rule (1) in section 49, which provides:

> *"49. Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules -*
>
> *(1) the notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless -*
>
> *(i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;*

(ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and, if there is no such post on that day, then by the next post thereafter;"

(a) Duty to give notice of dishonour: The collecting banker must give notice of dishonour with regard to any bills or cheques dishonoured on presentation by him. So far as cheques are concerned, the need for notice to the drawer is somewhat of an anomaly, the drawer being the principal debtor on the cheque and having no right of recourse against any other party. Nevertheless he is the drawer within the meaning of section 48, and as such is entitled to notice. Omission to give it would usually be excused under section 50(2)(c)(iii), (iv) and (v), the dishonour having arisen either from insufficient funds or from countermand of payment by the drawer.

(b) To whom to be given: Under section 49 rule (m), where a bill when dishonoured is in the hands of an agent (e.g. the collecting banker), the agent may either himself give notice to the parties liable on the bill, or he may give notice to his principal. The latter would seem the preferable course for a collecting banker.

(c) When to be given: The time allowances for giving notice, where a bill or cheque is in the hands of a bank for collection, are on a fairly liberal scale. By section 49 rule (m), the banker has the same time to give notice to his customer as if the banker were the holder; and the customer, upon receipt of such notice, has himself the same time for giving notice as if the banker had been an independent holder.

(d) Different places: It is however to be noted that, except in the case of personal communication, the crucial time is the sending, not the receipt, of the notice: section 49(1). Thus, where the parties reside in different places, the notice must be sent off on the day after the dishonour, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

(e) Practical implications: In general, the time limit under section 49 rule (1) is immaterial for practical purposes because in the majority of cases omission to give notice would be excused under section 50(2)(c) (iii), (iv) and (v) as mentioned in 3.2.1 above. It is therefore fair to say that in practice notice of dishonour is seldom necessary in the case of cheques.

Liability of Signatories of Cheques

3.3 A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay money to a specified person or to the bearer (section 3). Hence a cheque other than a cash cheque is a bill of exchange drawn on a banker (section 73). This includes a postdated cheque, the use of which is a widespread business practice in Hong Kong. We were told that the practice of discounting such cheques is frequent.

3.4 A bill of exchange is itself treated as a contract for which "value", which under section 2 means valuable consideration, must be given. The consideration must be sufficient to support a simple contract, or an antecedent debt or liability (section 27(1)(a) and (b)). Every party whose signature appears on a bill is prima facie deemed to have become a party for value (section 30(1)).

3.5 By drawing a bill, the drawer engages that on due presentment it will be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder (section 55(1)(a)).

3.6 When a bill is dishonoured by non-acceptance or non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder (sections 43(2) and 47(2)), who may sue in his own name (section 38) on the bill to enforce payment against all parties liable on the bill.

3.7 No person is liable upon a cheque as drawer who has not signed it in that capacity (section 23). It is not necessary that it should be signed with his own hand; it is sufficient if the signature or other recognition is written thereon by some other person by or under his authority. Section 16 specifically allows an agent to limit or negative his liability. "Sign" includes, in the case of a person unable to write, the affixing or making of a seal, mark, thumbprint or chop (section 3 of Interpretation and General Clauses Ordinance (Cap. 1)).

Section 26 of the Bills of Exchange Ordinance (Cap. 19)

3.8 Section 26 provides:

> *"26. (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.*
>
> *(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written,*

the construction most favourable to the validity of the instrument shall be adopted."

In considering the question of liability of authorised signatories of cheques, section 26 should be considered with related provisions in the Companies Ordinance (Cap. 32). Sections 33 and 93 of Cap. 32 are set out in Appendix 3.

The Case Law in Hong Kong

3.9 The discussion which follows relates solely to the liability of authorised signatories of company cheques and the effect of section 26 of the Bills of Exchange Ordinance. The question is: in what circumstances does the signatory of a limited company become personally liable on a company cheque he has signed?

3.10 Despite our best efforts, it has proved impossible to reconcile all the decisions which have resulted from the application of a number of interrelated legal principles to the various factual situations under study. We have concluded that the only useful classification is twofold: on the one hand, those judgments which have asserted, expressly or by implication, the paramount importance of commercial certainty; on the other hand, those which have sought to mete out justice to the parties according to the substantial merits of the particular case. Occasionally a decision meets both broad criteria.

3.11 In order to demonstrate the differing approaches we feel it necessary to refer in detail to only three of the Hong Kong cases: Oriental Gloves, Blooming Textile and its successor, Maytex.

The Oriental Gloves Case

3.12 Judge Cons (as he then was) was the trial judge in the District Court in Chan Hon-wing trading as Swatow Weng Lee Company v. Oriental Gloves Co. Ltd. [1968] DCLR 103. He held personally liable on a dishonoured company cheque the Managing Director. In the bottom right-hand the cheque bore a rubber stamp in the name of the 1st defendant company, underneath which was a dotted line upon which the 2nd defendant had signed his own name, and beneath which had rubber-stamped the words "Managing Director".

3.13 He observed at pages 105-6 that the Courts had adopted two separate approaches:

"On the one hand, following the case of Leadbitter v. Farrow, liability is placed squarely upon the individual whose actual name is subscribed to a bill, unless he can manage to extricate

himself with the help of section 26(1) of the Bills of Exchange Ordinance .....

"The second approach, exemplified in the case of Chapman v. Smethurst [1909] 1 KB 927, takes a broad view, includes the words surrounding the actual signature and seeks to discover to whom the resultant, composite whole relates. Thus in that particular case, the stamped name of a limited company, to which was appended the written name of a director followed by the stamped words "Managing Director", imposed liability on the company alone and not on the individual. Whereas in Landes v. Marcus Davids (1909) 25 TLR 478, in almost identical circumstances - the stamped name of a limited company appears to have been at the top of the bill rather than just above the written signature - the individuals were held responsible. I cannot see that the physical position of the stamped name, so long as it is clear that it relates to the bill as a whole, is a material distinction.

"Both approaches have their attractions and the arguments in favour of each are very evenly balanced. But I have finally decided to throw in my lot with those who favour the strict view, because this gives a life and purpose to section 26 which it would not otherwise have."

The Blooming Textile Case

3.14 Mr. Justice Cons reiterated this approach as the judge of first instance in Blooming Textile Limited v. Sung Sang Garment Factory Limited [1975] HKLR 189. The cheques there were printed across the top with the company's name, and the name was printed below the amount payable; beneath that the director signed, without more. The cheques were dishonoured. Mr. Justice Cons held the director liable.

3.15 His judgment was upheld on appeal, in Cheung Yiu-wing v. Blooming Textile Limited [1975] HKLR 388 where the decision of the Full Court (Briggs CJ, Huggins and McMullin JJ) was given by Mr Justice Huggins. The Court held that the personal signatory was liable unless he could rely on section 26 by showing that he had added words which indicated that he had signed in a representative capacity. The Court ruled that it was not called upon to look at the whole document to find out whether it had been signed in a representative capacity. The Court cited with approval Leadbitter v. Farrow (1816) 105 E.R. 1077. In that case at 1079 Lord Ellenborough said: "Unless a person says plainly 'I am the mere scribe', he becomes liable".

The Maytex Case

3.16 Mr Justice Cons was again judge at first instance in Maytex Trading Company v. Texfarm Garments Factory Ltd. [1976] HKLR 886. The Plaintiff sued on cheques drawn in his favour for goods supplied to the company. Surrounding the signature on each cheque was the impression of a rubber stamp with the words "Texfarm Garments Factory Ltd." appearing above the signature, and below it a dotted line and the word "Director". On the dotted line the director had signed his name. In the bottom left hand corner of the cheque were printed the name of the company and an account number. Cons J held the director liable on the dishonoured cheques. In restating his previous views, he concluded: (our underlining)

> *"This case illustrates once again the essential need for certainty in these matters, particularly in our community which relies so heavily upon commerce and trade for its livelihood. Negotiable instruments are what they are called - instruments which may be negotiated from one hand to another. All that a person should need to consider when he is offered one is whether or not it is complete and regular on its face and the creditworthiness of the person or persons who have signed. Who those persons are should be immediately apparent from what is inscribed on the document itself. It should not depend upon what view is subsequently taken by a particular judge or particular court of appeal".*

3.17 This decision was reversed by the Court of Appeal in Kwok Wing v. Maytex Trading Co. [1977] HKLR 149. Briggs C.J. allowed the director's appeal and accepted an argument by counsel for the appellant, (later to become Mr Justice Zimmern), that the signature by the director was not a signature by an agent, but simply formed part of the composite signature of the company, that all the director was doing was completing the composite signature of the company. This composite signature consisted of the impression of the rubber stamp together with the appellant's signature as director. It was the Company which was signing and not the appellant personally and consequently section 26 was irrelevant. As authority for this proposition counsel for the appellant quoted section 33 of the Companies Ordinance.

3.18 The Chief Justice pointed out that the "composite signature" argument was not referred to in the judgment in the Blooming Textile case. He distinguished that case, after referring to the facts, at page 152: "The distinction between these facts and the facts of the present case is narrow, but it is a valid distinction."

3.19 A less valid distinction would have been the distinction between the facts then under consideration in the Maytex case and the almost identical facts considered by the District Court in the Oriental Gloves case. When he gave judgement in Blooming Textile Limited v. Sung Sang Garment Factory Limited Cons J referred to his conclusion in the Oriental Gloves case and said

that he was still of the same opinion. Unfortunately the decision of the District Court in the Oriental Gloves case which became the basis of the decision in the Blooming Textile case, is not mentioned in the judgments of their Lordships in the Maytex case.

3.20 Huggins J.A. considered that there had been "some suggestion" that a composite signature argument had been advanced in Blooming Textile, but that the positions of the directors' signature and the impression of the company's name were such that "it could not seriously be contended" that they formed "a composite signature". He accepted the appellant's argument relying upon the authority of Chapman v. Smethurst and Nicholaides v. Henwood, Son, Soutter & Co. [1938] TPD 390. He quoted with approval from the judgement of Solomon J in the latter case, at page 394:

> *"But the company's stamp is more complex, and forbids the name of the company to stand alone. The support of the director's signature is necessary to complete the signature of the company … The form of the signature is therefore inconsistent with its being that of the defendant, and consistent only with its being that of the company. The stamped portion of the composite signature could only belong to the company, the written portion was added also belonging to the company in the person of its official. To convert it into the defendant's personal signature would be to contradict its structure."*

3.21 He distinguished the famous dictum of Lord Ellenborough in Leadbitter v. Farrow on the ground that it did not apply to a signature applied as a mere authenticator as distinct from a signature as drawer.

3.22 Pickering J.A. accepted the argument that the director's signature "was subscribed not as a drawer of the cheque but for the purpose of breathing life into the rubber stamp impression and that therefore section 26 of the Bills of Exchange Ordinance had no application". (page 156).

3.23 We mention a related argument which is capable in certain cases of reinforcing the decision in Maytex. This concerns the relationship between the principles of agency and the theory of corporate personality. Depending on the status in the company of the person signing, and the significance of the action of signing, it can be argued that the company is liable on its cheque, not by the principles of authentification or of agency at all, but by the theory of "the company in action". This is the directing mind and will approach exemplified by cases such as Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1914–1915] ALL E.R. 280 and Tesco Supermarkets Ltd. v Nattrass [1971] 2 ALL E.R. 127. Its effect upon the interpretation of section 33 of the Companies Ordinance (Cap. 32) has yet to be determined. The director's signature is not placed upon the cheque in any representative capacity at all; at that time he is the company in action. Accordingly it would be positively wrong to use words such as "on behalf of" which necessarily refer to the relationship of principal and agent or of master and servant.

Conclusion on the Case Law

3.24 The law is quite plain - it is only in its application to the facts of any individual case that uncertainty arises. In only two situations will an authorised signatory avoid personal liability. First by bringing himself under section 26(1), and second by bringing himself under the composite signature argument of Maytex. But if the specific factual situations do not comply with the narrow guidelines laid down by section 26 and Maytex, the extent of the authorised signatory's personal liability remains unclear. For example if he only places "director" below his signature, then argument may arise as to whether, depending on the exact wording used on the entire cheque, he falls within the composite signature principle of the Maytex case or of the strict construction rule in the Blooming Textile case; in the former instance he avoids personal liability, in the latter he does not.

IV. Banking and clearing house practice in Hong Kong

4.1 We were grateful for the opportunity to learn working of the Hong Kong Bankers Clearing House from its Manager, Mr. YAM Wai-kwong. We wish to record too the assistance given by Mr. J. Rankin, Secretary to the Hong Kong Association of Banks, Mr. R.J.P.B. Wainwright, Manager of the Current Accounts Section of the Head Office of the Hong Kong and Shanghai Banking Corporation, and Mr. R. Dewar, who holds a similar position with the Chartered Bank. Between them they gave us an insight into banking and clearing house practice in Hong Kong.

Cheque forms

4.2 There is a broad distinction between standard cheque forms used by individual account holders on the one hand, and by limited companies, partnerships and sole traders on the other.

4.3 Printed cheques for individuals, almost without exception, have the name of the account holder printed on the face of the cheques. Some are payable to order and some to bearer, some are crossed and some uncrossed. Personal accounts operated under a power of attorney generally use cheques signed above words such as "Attorney for XYZ".

4.4 So far as company cheques are concerned however, banks generally provide for their customers three different standard types of cheque:-

(a) Standard company cheques are slightly larger than individual personal cheques and have extra words printed on them. At the bottom right hand corner, a space is left for the company chop (a type of seal) and the authorised signatures. It was estimated that about 85-90% of companies using this type of cheque used

a rubber stamp, purchased commercially to show the words "for and on behalf of", immediately before the company name.

(b) Overprinted cheques are the same as standard company cheques, but the name of the company is printed at the top of the cheque and/or at the bottom right hand corner. In a survey of 100 company cheques of this form, it was noted that 60 had the words "for and on behalf" printed on them. It was estimated that about 70-75% of this category of cheques also had words indicating the nature of the signatory's representative capacity ("Director", "Manager") printed on them. It is generally the company's own decision what words, if any, are to be printed on these cheques.

(c) Specially printed cheques, as the description implies, are those where the standard format described above is not used. Such cheques are generally used by very large and in particular international companies. A variety of printed words, such as "for", "per", "pro", "for and on behalf of", "authorised signatures", or the title of the signatory ("Director", "Manager") often are used. Many American corporations who adopt this form indicate the title of the signatory rather than using the words "for and on behalf of".

Bank's Advice to Companies

4.5 The standard-form bank mandates for limited companies usually do not contain advice or show that the words "for and on behalf of" or "for" or "on behalf of" should be included in the company signature by the authorised signatory; generally it is left to the decision of the company itself what words, if any, to include on their cheques to indicate the capacity of the authorised signatories. There appears to be nothing in the rules or practice of most banks designed to ensure that their customers receive advice as to the effects of that decision. We observe therefore that there must be in Hong Kong many companies who, together with their authorised signatories, are unaware of these technical matters, and of the potential results of signing above inappropriate wording.

The Practice of American Corporations and Banks

4.6 The experience of other Hong Kong banks with the cheques of American corporations was confirmed by Mr. Patrick Lam of Citibank N.A. He advised that both in the United States of America and in Hong Kong some 90% of the overprinted cheque forms used by corporate clients of this bank had at the bottom the name of the company, a space, and then the corporate title of the authorised signatory, such as "Vice President". In very few, if any, cases were there additional words such as "per", "pro", or "for and on behalf of". In Hong Kong not less than 300 corporate cheques are cleared each day

by this bank alone. This widespread practice by American corporations is obviously based upon the interpretation of the Uniform Commercial Code which has been adopted as the law in New York State, and elsewhere in America, and which is described in detail in Chapter 5.8 to 5.11 of this report and in Appendix 4. Again we doubt if many of these signatories are aware of the effect upon their personal liability of the addition or omission of these words.

The Hong Kong Clearing House:

4.7 We summarise below the information supplied to us about this organisation, and attach as Appendix 5 some extracts from the guidelines for its clearing operation.

(a) Cheque Clearing Schedule

The Clearing House operates on a 24-hour basis, like a post office for cheques, handling a daily average of 250,000 cheques. The normal Clearing Schedule is as follows:

> Cheques are presented by the "collecting" banks to the Clearing House in batches between 11.30 a.m. and 5.00 p.m. on weekdays and between 11.30 a.m. and 2.15 p.m. on Saturdays.
>
> Cleared cheques are collected by each individual "paying" bank from 7.00 a.m. onwards on the following working day for the signatures and the availability of funds in the accounts to be checked.
>
> Any unpaid cheques cleared on the previous working day must be returned to the Clearing House in batches with a slip notifying the reason for dishonour before 1.00 p.m. These unpaid items are sorted manually at the Clearing House, to be ready for collection by the banks at 2.15 p.m. on the same day.

Under this timetable, a cheque presented to a bank for payment through accounts is normally regarded as good in the absence of any notice of dishonour by 2.15 p.m. on the following working day.

(b) Data on signatures on company cheques

A sample of 105 cheques was taken at random for analysis. The results are listed in the table included in Appendix 5. Obviously the sample is far too small to be treated as representative. Accordingly we treat inferences derived from the survey as no more than indications which reinforce the

impressions gained from the consultations described above. But if one assumes that 20% of all cheques cleared are company cheques, and if one third of those simply use the company name and the personal signature of the authorised signatory (with or without a description such as "Director") but omitting the important words "for and on behalf of" or similar terms, then the strict interpretation of section 26 applied in Blooming Textiles exposes to the risk of personal liability in the event of dishonour the authorized signatories of not less than 4 million company cheques each year.

We have been unable to obtain statistics or any indication as to the number of company cheques which are not met upon presentation in an annual period.

V. Comparable jurisdictions

5.1 We set out below a summary of the relevant legislation in countries where the legal framework is similar to that of Hong Kong.

England and Wales:

5.2 Sections 26 and 49 of the English Bills of Exchange Act 1882 are identical to their counterparts in the Bills of Exchange Ordinance (Cap. 19). There is no current proposal for change to either section.

Australia:

5.3 Bills of Exchange are constitutionally a matter of Federal Jurisdiction in Australia, which adopted the English legislation in its Bills of Exchange Act, 1909. Sections 31 and 54(b) are identical with sections 26 and 49 of the English and Hong Kong enactments, though some other parts of the Australian legislation, not mentioned in the present context, are different, partly as a result of the adoption of recommendations contained in the Manning Report in 1964.

Canada:

5.4 The relevant provisions of the Bills of Exchange Act, R.S.C. 1952 c. 15, are identical to their English counterparts.

Malaysia:

5.5 Malaysia has adopted the English legislation in its Bills of Exchange Act, 1949 (Act 204). Sections 26 and 49 remain identical with their

English counterparts. There is no current proposal for change to either section.

New Zealand:

5.6 The relevant provisions of the Bills of Exchange Act, 1908, are identical to their English counterparts.

Singapore:

5.7 Singapore adopted the English legislation in its Bills of Exchange Act (Cap. 28) (Act 11 of 1970), and sections 26 and 49 remain identical to their English counterparts. There is no current proposal for change to either section.

United States of America:

5.8 Laws governing bills of exchange are constitutionally a matter for each individual State, but a number, including the State of New York, which is the leading financial State, have adopted the provisions of the Uniform Commercial Code. The relevant provisions in the New York Code (3-402 and 403) are not dissimilar to section 26(1), but have been widely interpreted to mean that the use of the company name, preceded or followed by the corporate title of the signatory (without more) is a sufficient indication of his representative capacity.

5.9 The provisions of the code (3-508) relating to the giving of notices of dishonour are not as stringent as those contained in section 49 of the Hong Kong Ordinance.

5.10 We were grateful for advice on this matter of "foreign law" received from American lawyers in several firms, including Mr. Steve Chu of Baker & McKenzie and Mr. Mark Cantor of Milbank Tweed (American Attorneys). Rather than paraphrase their remarks, we attach as Appendix 4 the helpful advice to the same effect tendered to us by Mr. David Heleniak of Shearman & Sterling (American Attorneys).

5.11 We set these matters out at such length for two reasons: because America is by volume Hong Kong's major trading partner, and because, under a strict interpretation of sections 55 and 26 of the Bills of Exchange Ordinance, the majority of such corporate signatories are capable of being held personally liable in Hong Kong.

VI. Our approach

6.1 We have taken as our lodestar the view expressed by Mr. Justice Donaldson (as he then was) in Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd. [1968] QB 839 at 847 that:

> *"… contrary to popular belief, the law, justice and common sense are not unrelated concepts".*

6.2 When considering whether change is appropriate in these areas of statutory law, we have borne particularly in mind the following considerations:

(a) the general law of Hong Kong is largely derived from England, and, in particular, the commercial law of Hong Kong is closely modelled on the English example;

(b) the principles of English commercial law retain pre-eminence throughout the trading world despite changing world politics and patterns of trade; Hong Kong's major trading partners apply those principles;

(c) the law under review is common not only to England but to the common-law jurisdictions generally, and in none of them are we aware of any pressure or proposals for change in the statutory provisions;

(d) Hong Kong's unique financial and trading role in the region should not, without very good reason, be undermined by piecemeal change to a widely accepted body of law governing commercial transactions;

(e) the sub-committee's research disclosed an interesting anomaly. On the one hand, commercial lawyers were of the view that the commercial community of Hong Kong was well aware, at a practical level, of the necessity to safeguard the position of signatories to cheques. On the other hand, bankers and businessmen assured the sub-committee that it was largely a matter of luck or tradition which accounted for the various endorsements on company cheques. Thus, most businessmen in Hong Kong would be horrified at the thought that they could become personally liable on a "company cheque".

6.3 Finally, we respectfully echo the words of Mr. Justice Pickering in the appeal court in the Maytex case [1977] HKLR 149 at 158 that:

> *"There is merit also, though by itself it could not be conclusive, in the consideration that the decision in the court below would appear to render Hong Kong out of line with the generally*

accepted interpretation of such a signature as that with which we are concerned and there is much to be said for international commercial comity."

VII. Our conclusions

Notice of dishonour

7.1 We have found no evidence that the present state of the law relating to section 49(1) of the Bills of Exchange Ordinance, either in theory or practice, has created hardship or defeated the claims of bona fide holders of value. The systems currently in use in Hong Kong provide an efficient means of notification to the holders of dishonoured cheques. Even if strict compliance with the twenty-four hour rule is not always possible in practice, notification shortly thereafter will usually fall within the permitted exceptions.

7.2 There is only one small area of doubt, concerning the correct interpretation of the term in section 49(1)(ii) of "different places". In the context of Hong Kong, what are "different places"? We are satisfied, however, that the courts would adopt a reasonable construction along the lines expressed in cases such as Rowe & Co. v. Pitts [1973] 2 NSWLR 159, where it was held that two suburbs in Sydney were "different places" within the meaning of the equivalent of section 49(1).

7.3 We conclude that there is no problem so far as this section is concerned.

Signatories to Cheques

7.4 We are satisfied from our research that, in the case of individuals, partnerships, and those who use trading names, the Bills of Exchange Ordinance provides sufficient certainty and protection, both for holders and for those who draw cheques, (i.e. "non-company" cheques). Notwithstanding the special circumstances of the multi-lingual community in Hong Kong, and the widespread use of individual, partnership and trading-name chops, we have neither been advised, nor can we see, any problems local to Hong Kong which merit special attention as far as the use of chops is concerned.

7.5 However, we are concerned about the situation as regards "company" cheques. We consider that many people both in the banking and the business community believe that a "company cheque" for a company trading debt, issued with authority and in accordance with the company's articles and its mandate to the bank, will involve no personal liability for the director or other authorized signatory who signed as such, if the cheque is dishonoured. We have concluded that there are a good number of businessmen potentially exposed to the risk of such personal liability, for we have found that there is little uniformity in the form of words used on cheques

to affix and authenticate the signature of the company, and that on as many as four million cheques each year the wording is insufficient to exclude personal liability.

7.6 But this potential danger to the individual signatory can be avoided easily by the provision of appropriate information, leading to the inclusion of "for" or "on behalf of" or similar words on the cheque.

7.7 We have found no evidence that in this field the payee requires special protection by making the authorized signatory invariably liable (as well as the company) on a cheque. There are currently available to the prudent businessman in Hong Kong sufficient safeguards in his dealings with corporate traders. Not only are the usual credit checks possible, but bank guarantees, deposits of funds, joint deposits in escrow, letters of credit, personal guarantees by Directors or others of company liabilities, and so on, are all available where necessary. We see no special reason why the payee must of necessity be able to obtain payment from someone on a dishonoured cheque.

7.8 We have concluded accordingly that to regard certainty of enforcement of a cheque as the paramount consideration would be contrary to common sense and commercial reality, and that such certainty is not contemplated by the primary contracting parties. This is a specific problem, confined to a limited factual situation, albeit quite a common one. It is in these paragraphs that we have sought to answer the primary questions with which we began in paragraph 1.3.

7.9 At the practical level, however, we consider that whether or not it may be said that bankers owe any contractual, fiduciary or general duty of care to their clients in this particular matter, it would be prudent banking practice for bankers to advise their corporate account holders that, as the law stands at the moment, it will only be the use of words indicating that the signatory signs for or on behalf of a principal or in a representative character which will be certain to avoid the personal liability to the payee of the authorized signatory on a dishonoured company cheque.

7.10 A further cause for concern arises from the provisions of Section 93 of the Companies Ordinance, which is reproduced in Appendix 3. Section 93(1)(b) requires every company to have its name mentioned in legible characters in all cheques. Section 93(5) provides that if a director, manager, or officer of a company, or any person on its behalf signs or authorises to be signed on behalf of the company any cheque wherein its name is not mentioned in the manner required by the section he is liable to a fine of $1,000 and further is personally liable on the cheque unless it is duly paid by the company. The effect of these provisions is that failure to set out the company's name, fully or accurately or if in Chinese characters without the Chinese characters (有限公司), could result in personal liability. We think, therefore, that bankers should consider the desirability of drawing the attention of their corporate clients to Section 93 of the Companies Ordinance.

7.11 Consistent with basic principles we take the view that, in the normal course, the act of a company director signing a company cheque performed bona fide and with authority, and in compliance with the formalities required by the Companies Acts, should not (without more) attract personal civil liability for the director (See "Halsbury's Laws of England" 4th Edition, Vol. 7, para. 516 and "Buckley; The Companies Acts" 13th Edition, page 82). We regard this principle as fundamental to modern company law, and fundamental to commercial certainty. We, therefore, suggest that in the area of law under consideration, company cheques regularly executed should be, in general, binding only on the company.

7.12 It is implicit in the Maytex decision that the signatory should have acted under the authority of the principal. For obvious reasons, and to accord with section 33 of the Companies Ordinance, we think that implication should be preserved. In this context, we have noted the curious absence of a similar requirement in section 26(1). However, in a century of application of identical provisions in the Commonwealth, that absence does not seem to have caused problems which otherwise by now would have certainly ensured amendments. This and the considerations in the preceding paragraph have persuaded us against any suggestion that a similar requirement be embodied in section 26(1).

7.13 It will be seen from paragraph 3.15 that the Full Court in the Blooming Textile case held that it was not called upon to look at the whole document to ascertain whether it was signed in a representative capacity under section 26(1) of the Bills of Exchange Ordinance. However, in determining whether the signature of a person is part of the composite signature of his principal, it is necessary and proper for the document to be construed as a whole; any new provision should provide for this.

7.14 At the end of the day, we have come down to this. Reference to the authorities listed in Appendix 2(IV) provides confirmation that Hong Kong is not unique in experiencing difficulties in this field. Nevertheless we think it desirable that, at least in our jurisdiction, the uncertainty be clarified.

7.15 When we considered ways and means, it was suggested that appropriate publicity, coupled with our recommendations for advice by the banking community, would go some of the way. It has further been suggested that, the legal principles being clear, the issue could safely be left to the normal development of the doctrine of precedent by our courts. Naturally we are reluctant, also, to recommend legislative change for its own sake.

7.16 On balance we have finally concluded that these measures will not be sufficient, for two reasons. First, the possibility, each year, of personal liability for the signatories to 4 million cheques of companies engaged in local and international trade is a risk of unacceptable magnitude. In our view, it should be remedied, in addition to the measures already proposed, by legislative clarification. Secondly, the result, achieved by the decision of the Full Court of Hong Kong in Maytex, accords with common sense and, we believe, reflects the understanding of most parties who sign or receive

company cheques. However, the result cannot be guaranteed to be uniformly applied in the face of varying factual situations. Since the noblest of minds may differ, we have concluded that the common sense result reached in Maytex should be accorded statutory recognition.

7.17 In considering how to achieve this purpose we have met our greatest difficulty: where, and in what form, should legislative intervention occur? We have considered a number of options. First, we are not disposed to suggest any change in the definition of "sign" in Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1). We cannot foresee all the consequences which might flow from such a change since that Ordinance is of general application. Nor would we wish to create yet another statutory exception, of potentially wide application, to the common law rules governing the interpretation of written contracts, and the consequential rules of admissibility of parol evidence to vary the writing.

7.18 Next, we considered a proposal by the sub-committee, with which a number of experienced commentators agreed, for an additional provision to be inserted in Section 33 of the Companies Ordinance (Cap. 32) along the following lines:

> *"Sub-section (2)* *A bill of exchange or promissory noted deemed to have been made, accepted or endorsed on behalf of a company under sub-section (1) shall not, unless the contrary is proved, be a bill or note executed by the person acting under the authority of the company so as to render him liable on that bill or note."*

The reasons for this proposal were fourfold. It is said that the problem we are seeking to cure relates to a small category of cheques, and a small category of individuals: cheques of companies, and signatories for companies. The nexus being companies, amendment should occur in the legislation dealing with companies, and in that section dealing with execution by companies of (inter alia) cheques. Furthermore, this proposal has the merit of preserving intact the wording of the Bills of Exchange Ordinance. It reflects the concern for retaining uniformity of our common statutory code governing a much wider range of negotiable instruments, there having been no proposals for change in any relevant jurisdiction. Finally, it was proposed that a "sign-post" by way, for example, of a marginal note to Section 26 of the Bills of Exchange Ordinance would alert the reader of that legislation to the need for reference to the Companies Ordinance. Appendix 1(II) contains a full list of those who gave us the benefit of their comments about the sub-committee proposal.

7.19 In contrast, another suggestion has been made for amendment to the provisions of Section 26(1) of the Bills of Exchange Ordinance. In effect, the comment is that the section requires complete redrafting in any event to cure not only this, but other anomalies of wider application.

7.20 Finally, we have considered a proposal that there should be amendment to the Bills of Exchange Ordinance, not by direct interference with the provisions of Section 26(1), but by the enactment of an additional provision along the following lines:

(a) the insertion in section 26(1) of "subject to section 26A" after "but"; and

(b) the insertion of the following new section :

"Corporate Signatures. *26A. Where a bill appears to be made, accepted or indorsed by or on behalf of a limited company by a person acting under the authority of that company and, on a proper construction of the bill as a whole, that making, acceptance or indorsement is a making, acceptance or indorsement by that company, the person so acting is not without more personally liable on that bill."*

7.21 We have resisted the temptation to let the matter rest there, in the lap of the Law Draftsman, a choice to be governed solely by principles of drafting technique. Of course we have consulted the Law Draftsman, but it is desirable, we believe, to make a positive recommendation if we can.

7.22 In the event, we have finally concluded that amendment should not be made to Section 33 of the Companies Ordinance. We are persuaded that the proper place for an amendment is in the Bills of Exchange Ordinance because that is the Ordinance which primarily deals with the liability of parties to negotiable instruments, we are seeking to qualify the terms of that Ordinance, and that is where statute-users would expect to find such a provision. Further, the problem relates to the liability of the signatory rather than the liability of the company. We also take the point that, where it is considered right, Hong Kong has departed from the position elsewhere.

7.23 Turning next to Section 26 of the Bills of Exchange Ordinance, we cannot ignore the fact that identical provisions have been on Commonwealth Statute Books for a century. We should not lightly discard the advantages we have already mentioned of preserving the widely accepted principles of English commercial law and the text of statutory law common not only to England but to common law jurisdictions generally. We consider, therefore, that section 26 should, as far as possible, remain intact.

7.24 Accordingly, we have concluded that we should recommend that legislative clarification should be limited to the insertion in the Bills of Exchange Ordinance of the additional provision outlined in para. 7.20. By its terms, this amendment recognizes that the latter part of Section 26(1) (which suggests that the mere description of the signatory as agent or as filling a representative character would leave him exposed to personal liability),

should be qualified so as to remove any suggestion of conflict with the additional provision.

VIII. Recommendations

8.1 We RECOMMEND that, as a matter of prudent banking practice, bankers should consider the desirability of advising their corporate clients that, as the law stands at the moment, the only way in which the signatory may be sure of avoiding his personal liability on a dishonoured company cheque under the Bills of Exchange Ordinance (Cap. 19) is by the addition to his signature of the words "for" or "on behalf of" or "for and on behalf of" and of the name of the company. We also think that bankers should consider the desirability of inviting the attention of their corporate clients to section 93 of the Companies Ordinance. This matter should also be drawn to the attention of the Association of Hong Kong Banks and the Registrar General.

8.2 We RECOMMEND that the provisions of Section 26 of the Bills of Exchange Ordinance (Cap. 19) relating to persons signing bills of exchange as agents or in representative capacities should not be changed, other than by the insertion of the words "subject to Section 26A" after "but".

8.3 We RECOMMEND the insertion in the Bills of Exchange Ordinance of a new section along the following lines:

> "Corporate Signatures. 26A. Where a bill appears to be made, accepted or indorsed by or on behalf of a limited company by a person acting under the authority of that company and, on a proper construction of the bill as a whole, that making, acceptance or indorsement is a making, acceptance or indorsement by that company, the person so acting is not without more personally liable on that bill."

8.4 We recommend that there should be no amendment to Section 49(1) of the Bills of Exchange Ordinance (Cap. 19).

香港法律改革委員會

「論題六」研究報告書

關於商業法——票據法例

中文概畧

法律改革委員會應邀對有關票據條例之兩項問題作出研究；在實際上，所論及之票據皆爲支票而已。

二、 問題爲應否對票據條例中有關下述情事之規定，作出修訂：

（甲） 關於支票如不兌現時，持票人或其代理人須將情事通知簽發支票人之時限；及

（乙） 代他人簽署支票人士（例如代表有關公司簽署支票之僱員及董事）所肩負之責任。

三、 關於第一項問題，法律改革委員會認爲，對通知時限是否足夠一事，無論採取何種觀點，現行法例已有如下規定：就存款不足或撤銷付款而致不兌現情事，持票人或其代理人未能在指定時限內通知對方時，可獲酌情寬恕。因此，毋須修訂現行之有關時限。

四、 關於第二項問題，即代表公司簽署支票人士所肩負之責任，法律改革委員會認爲，與此論題有關之法律歷史背景含混不清。代表其公司簽署支票之人士，大多認爲，該等支票如不能兌現，簽署支票人士本身毋須肩負任何責任。根據另一法律觀點，代表公司簽署支票之僱員及董事，如未在支票上其簽名旁加書「代行」或「代表」等字樣，則彼等本身須對其所代表之公司並不償付之支票肩負責任。在本港，該類欠缺此等極度重要字樣之公司支票每年爲數可達四百萬張之多。

五、 根據另一法律觀點，如公司支票上某人之簽名僅爲構成該公司簽名之一部份，則該人毋須肩負責任。但是，祇描述簽署人爲「董事」等並不足以保障該人。

六、　　法律改革委員會對該等問題在法律及實際上之影響加以研究後，現已提出下列建議——

（一）　支票如不兌現，持票人或其代理人須將情事通知簽發支票者之現行時限規定，毋需修改；

（二）　作爲銀行界一貫之審慎措施，銀行家應考慮宜否向客戶公司作出以下提示：根據現行法例之規定，公司支票如不能兌現。則代公司簽署該支票人士之簽名，須曾加書「代行」或「代表」或「代行及代表」等字樣以及該公司之名稱，簽署人本身方能確保免負票據條例所規定之責任；及

（三）　票據條例應予修訂，以便明確規定：如一支票上某人之簽名僅爲構成該公司簽名之一部份，則該名簽署人本身毋須肩負責任。

七、　　法律改革委員會並建議銀行家宜考慮促請客戶公司注意公司條例第九十三條之規定。根據該等規定，支票簽署人如未在支票上填寫該公司之詳實名稱，又或倘用中文書寫該公司之中文名稱而漏寫「有限公司」各字，則簽署人本身須對其所簽之支票肩負責任。

Appendix 1

ACKNOWLEDGEMENTS

PART I

Mr Nicholas Adams
Attorney General's Chambers, Hong Kong

The Hon Mr Justice Barker

Mr Malcolm Barnett
Hong Kong & Shanghai Banking Corporation

Mr Chang Min Tat
Commissioner of Law Revision, Kuala Lumpur

Mr Ter Kim Cheu
Attorney General's Chambers, Singapore

Mr Steve Chu
Baker & McKenzie

The Hon Mr Justice Cons

Mr Mark Cantor
Milbank Tweed (American Attorneys)

Mr Jonathan Daw
Attorney General's Chambers, Hong Kong

Mr R. Dewar
The Chartered Bank

His Hon Judge Downey

Mr James Findlay
Deputy Law Draftsman
Attorney General's Chambers, Hong Kong

Mr David Heleniak
Shearman & Sterling (American Attorneys)

Mr Raymond Ho
Attorney General's Chambers, Hong Kong

The Hon Mr Justice Huggins

Mr Ip Yeuk Lam
Vice Chairman
The Chinese General Chamber of Commerce

Mr Patrick Lam
Citibank N.A.

Mr Henry Litton, Q.C.

Miss Y.C. Liu
Liu, Chan & Lam

Mr J.D. McGregor
Hong Kong General Chamber of Commerce

Mr J.C.S. Rankin
Secretary
The Hong Kong Association of Banks

Mr R.H. Streeten
Secretary
The Law Commission, London

Mr R.J.P.B. Wainwright
Hong Kong & Shanghai Banking Corporation

Mr G.L. Walker
Attorney General's Department, Canberra

Mr T. Welsh
Chairman
The Hong Kong Association of Banks

Mr YAM Wai-kwong
The Clearing House of the Hong Kong Association of Banks

The Hon Mr Justice Zimmern

PART II

Secretary for Economic Services

Commissioner of Banking

The Hong Kong Association of Banks

Registrar General's Department

The American Chamber of Commerce in Hong Kong

The Crown Solicitor

UMELCO Study Group - Company Bills

Secretary for Monetary Affairs

Hong Kong Bar Association

Law Society of Hong Kong

Department of Business Management Studies
Hong Kong Polytechnic

Appendix 2

MATERIALS

			Page
I	**GENERAL**		27
II	**ARTICLES AND COMMENTS**		27
III	**LEGISLATION**		28
	A.	AUSTRALIA	28
	B.	CANADA	28
	C.	ENGLAND	28
	D.	HONG KONG	28
	E.	MALAYSIA	28
	F.	NEW ZEALAND	28
	G.	SINGAPORE	28
	H.	UNITED STATES OF AMERICA	28
IV	**JUDICIAL DECISIONS**		29
	A.	AUSTRALIA	29
	B.	CANADA	29
	C.	ENGLAND	29
	D.	HONG KONG	30
	E.	INDIA	32
	F.	SOUTH AFRICA	32

I GENERAL:

1. M. Megrah & F.R. Ryder, Byles on Bills of Exchange, 23rd ed., 1972.

2. D.V. Cowen & L. Gering, Cowen on the Law of Negotiable Instruments in South Africa, 14th ed., 1966.

3. L.C.B. Gower, Principles of Modern Company Law, 14th ed., 1979.

4. M. Megrah & F.R. Ryder, Paget's Law of Banking, 8th ed., 1972.

5. Halsbury's Laws of England, 4th ed., Volumes 4 & 7.

6. W.K. Thomson, "Second Report of the Companies Law Revision Committee on Company Law", 12th April 1973.

7. Hong Kong Hansard, Session of 1960, at pp. 339-342

8. United Kingdom Hansard,

   (1) House of Commons, 3rd Series, Vol. CCLXVII, 1882, pp. 1202-3.

   (2) House of Commons, 5th Series, Vol. 592, 1957-58, pp. 1104-1114.

9. Canadian Abridgment, 2nd ed., 1964, Vol. 4.

II ARTICLES & COMMENTS:

1. B. Downey - Comments on Blooming Textiles Ltd. v. Sun Sang Garment Factory Ltd., (1975) 5 Hong Kong Law Journal 232-3.

2. B. Downey - Comments on Kwok Wing v. Maytex, (1978) 8 Hong Kong Law Journal 76-7.

3. M.G. Baer, "Bills of Exchange Act - Promissory Notes Liability of Signatories - Extrinsic Evidence etc." (1973) 51 Canadian Bar Review 666-668.

4. J.F. Corkery, "Credit Cards in New Zealand: some potential problems", [1977] New Zealand Law Journal 30-40.

5. W.J. Chappenden, "The Liability of Signatories to Indorsers of Cheques: Miller Associate (Australia) Pty. Ltd. v. Bennington Pty. Ltd." (1981) 55 Australian Law Journal 135-144.

6. A.H. Hudson, "Mistakes of Form in Bills of Exchange", [1981] Journal of Business Law 101-109.

III LEGISLATION:

A. Australia

Bills of Exchange Act 1909

B. Canada

Bills of Exchange Act, R.S.C. 1952, C. 15

C. England

1. Bills of Exchange Act 1882
2. Cheques Act 1957
3. Companies Act 1948-80
4. European Communities Act, 1972

D. Hong Kong

1. Bills of Exchange Ordinance, Cap. 19, Laws of Hong Kong
2. Companies Ordinance, Cap. 32, Laws of Hong Kong
3. Interpretation & General Clauses Ordinance, Cap. 1, Laws of Hong Kong

E. Malaysia

Bill of Exchange Act 1949

F. New Zealand

Bills of Exchange Act 1908

G. Singapore

Bills of Exchange Act, Chapter 28

H. United States of America

New York Uniform Commercial Code (NY - UCC)

Uniform Commercial Code, Article 3

IV JUDICIAL DECISIONS:

A. Australia

1. Dudley Buildings Proprietary Ltd. v. Rose (1933) 49 C.L.R. 84

2. Amalgamated Hardwork Manufacturers v. Cole (1935) Argus L.R. 119

3. Summergreene v. Parker (1950) 80 C.L.R. 304, 323

4. Vickery v. Woods (1951-1952) 85 C.L.R. 336

5. Electrical Equipment of Australia Limited v. Peteis & Another [1957] SR (NSW) 361

6. Black v. Smallwood (1965-1966) 117 C.L.R. 52

7. H. Rowe & Co. Pty. Ltd. v. Pitts [1973] 2 N.S.W.L.R. 159

8. Miller Associates (Australia) Pty. Ltd. v. Bennington [1975] 2 N.S.W.L.R. 506

B. Canada

1. Schaffer v. Tubby, Smith & Co. [1924] 1 D.L.R. 468

2. Alliston Creamery v. Grosdanoff & Tracy [1962] 34 D.L.R. (2d.) 189

C. England

1. Leadbitter v. Farrow (1816) 105 E.R. 1077, 1079

2. Okell v. Charles 34 LT 822

3. Kelner v. Baxter [1866] LR 2 CP 174

4. Dutton v. Marsh (1871) 6 QB 361

5. Crears v. Hunter (1887) 19 QBD 341

6. MacDonald v. Whitfield (1883) 8 AC 733

7. Salomon v. Salomon [1897] AC 22

8. The Royal Bank of Scotland v. Tottenham [1894] 2 QB 715

9. Landes v. Marcus & Davids (1909) 25 T.L.R. 478

10. Chapman v. Smethurst [1909] 1 KB 927

11. Lennards's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. [1914-1915] All E.R. 283

12. Elliott v. Bax-ironside [1925] 1 KB 301

13. Britannia Electric Lamp Works Limited v. D. Mandler & Company Ltd. and D. Mandler [1939] 2 KB 129

14. Oliver v. Davis [1949] 2 KB 727

15. Newborne v. Sensolid (Great Britain) Limited [1954] 1 QB 45

16. Lazarus Estates Ltd. v. Beasley [1956] 1 QB 702

17. Catherine Lee v. Lee's Air Farming Ltd. [1961] AC 12

18. Tunstall v. Steigmann [1962] 2 All E.R. 417

19. Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd. [1968] 2 QB 839 at 845

20. Tesco Supermarkets Ltd. v. Nattrass [1971] 2 All E.R. 127

21. Rolfe Lubell & Co. v. Keith [1979] 1 All ER 860

22. Korea Exchange Bank v. Debenhams (Central, Buying) Ltd. [1979] 1 Lloyd's REP. 548

23. British Airways Board v. Parish [1979] 2 Lloyd's REP. 361

24. Maxform S.P.A. v. Mariani & Goodville Ltd. [1979] 2 Lloyd's REP. 385 and [1981] 2 Lloyd's REP. 54

25. R. v. Torri, The Times, 26 January 1982

D. Hong Kong

1. Chak Pak Lam v. Chan Sui King [1956] H.K.L.R. 371

2. Commissioner of Inland Revenue v. Four Seas Company Ltd. [1958] H.K.L.R. 201

3. Tse Wai Hing v. Shing Hing Tai Ltd. [1960] D.C.L.R. 188

4. Mo & Co. (Hong Kong) Ltd. v. Tak Fung Muk Yuen [1961] D.C.L.R. 176

5. Tse Hing Cheong v. Fung Choi [1962] D.C.L.R. 34

6. Mo Yiu Kwan v Four Union Trading Co. [1963] D.C.L.R. 71

7. Liu Lung-Cheung v. Yu Hoi-Ming [1964] D.C.L.R. 177

8. East Asia Company v. Chan Chun-yuen [1964] D.C.L.R. 280

9. Yee Sang Metal Supplies Co. v. Devon & Co. Ltd. [1964] H.K.L.R. 809

10. Cheng Chi trading as Chi Kee v. Hing Fat Cheung Co. Ltd. [1965] D.C.L.R. 165

11. Hong Kong Travel Bureau Ltd. v. George Wittsack [1967] D.C.L.R. 1

12. Capital Printing Co. Ltd. v. South America Plastic Manufactory [1968] D.C.L.R. 75

13. Chan Hon-wing v. Oriental Gloves Co. Ltd. [1968] D.C.L.R. 103

14. Great Sincere Trading Co. Ltd. v. Swee Hong & Co. [1968] H.K.L.R. 660

15. Blooming Textiles Ltd v. Sun Sang Garment Factory Ltd. [1975] H.K.L.R. 189

16. Cheung Yiu-wing v. Blooming Textile Ltd. (Full Court) [1975] H.K.L.R. 388

17. Maytex Trading Co. v. Texfarm Garments Factory Ltd. [1976] H.K.L.R. 886

18. Kwok Wing v. Maytex Trading Co. (Court of Appeal) [1977] H.K.L.R. 149

19. Man Sun Finance International Corporation Ltd. v. Wong Kwan Man, Barnes J. No. 535 of 1981 in the Supreme Court of Hong Kong, unreported.

E. India

Sreelal Mangtulal v. Lister Antiseptic Co. Ltd. [1925] A.I.R. (Calcutta) 1062

F. South Africa

1. Israelstam v. Pillimer (1911) TPD 781

2. Nicolaides v. Henwood, Son Soutter & Co. (1938) TPD 390

3. Moon & Co. Ltd. v. Eureka. Stores (1949) S.A.L.R. 40 (IV)

Appendix 3

The Companies Ordinance (Cap. 32)

Section 33 -

"A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority."

Section 93 -

"(1) Every Company -

(a) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible;

(b) shall have its name engraved in legible characters on its seal;

(c) shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) Every limited company (other than a company licensed to be registered without the addition of the word "limited" to its name) -

(a) which exhibits outside or inside its registered office or outside or inside any office or place in which its business is carried on; or

(b) which uses on its seal; or

(c) which uses in any notice, advertisement or other official publication of the company, or in any contract, deed, bill of exchange, promissory note, endorsement, cheque, or order for money or goods purporting to be signed by or on behalf of the company, or in any bill of parcels, invoice, receipt or letter of credit of the company, or in any trade catalogue, trade circular, show card or business letter, any name of or for the company in Chinese characters, whether such name be a transliteration or translation of its name in the memorandum or not, shall append to such name so used in Chinese characters the Chinese characters 有限公司.

Provided that it shall be lawful for the Governor by licence to direct that such company shall be exempted, wholly or in part,

from the requirements of this subsection, and to revoke any such licence.

(3) If a company does not paint or affix its name in manner directed by this Ordinance, the company and every officer of the company who is in default shall be liable to a fine of $50, and if a company does not keep its name painted or affixed in manner so directed, the company and every officer of the company who is in default shall be liable to a default fine.

(4) If a company fails to comply with any of the provisions of subsections (1) and (2) the company shall be liable to a fine of $1,000.

(5) If a director, manager, or officer of a company, or any person on its behalf -

(a) uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraved as aforesaid; or

(b) issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, or order for money or goods, wherein its name is not mentioned in manner aforesaid; or

(c) issues or authorizes the issue of any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid,

he shall be liable to a fine of $1,000 and shall further be personally liable to the holder of the bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless it is duly paid by the company.

Appendix 4

51 WALL STREET
NEW YORK 10005
(212) 483 - 1000
CABLE "NUMLATUS"
TELEX: ITT 421295
WJ 128103

CITICORP CENTER
153 EAST 53 STREET
NEW YORK 10022
(212) 483 - 1000
TELEX: 126898

THREE EMBARCADERO CENTER
SUITE 1860
SAN FRANCISCO 94111
(415) 392 - 4790
CABLE: "NUMLATUS. S. F. "
TELEX : ITT 470594

SHEARMAN & STERLING

SUITE 1801
12 HARCOURT ROAD
HONG KONG

5 - 253028

CABLE: "NUMLA" TELEX: 63314 NUMLA HX

AMERICAN COUNSELLORS AT LAW

21 AVENUE GEORGE V
75008 PARIS
723 - 55 - 46
"NUMLATUS PARIS"
TELEX: 842 - 650288

40 BASINGHALL STREET
LONDON EC2 5DE
01 - 638 - 1821
"NUMLATUS LONDON EC2"
TELEX: 851 - 884274

POST OFFICE BOX 2948
ABU DMABI
UNITED ARAB EMIRATES
324477
CABLE: "NUMLATU"
TELEX: 949 - 22662EM

Your Ref: LRC/BILL EX – C

March 2, 1982

The Law Reform Commission of Hong Kong
Attorney General's Chambers
Central Government Offices
Main Wing
Hong Kong

Attention: Mr. A.S. Hodge
Secretary

Commercial Law: Bills of Exchange (Topic 6)

Dear Andrew:

I am pleased to respond to your inquiry of February 15 on behalf of the Law Reform Commission in connection with its study of the captioned matter. As we have agreed, my comments set forth herein are intended solely to advise you of the current state of the statutory laws of the United States, particularly of the State of New York, with respect to that subject. I do not intend to express any view herein as to current law or practice of Hong Kong concerning the matters discussed.

I should note that the statutory law in the United States inevitably develops a gloss of judicial interpretation through the reported decisions of our courts. I have not conducted an investigation of the recent decisions of the courts with respect to the statutes discussed below.

In general, the laws of the United States relating to bills of exchange* are a matter of the laws of the 50 States, not of the federal

* The term "bill of exchange" is no longer used in the negotiable instrument laws of the United States, but comparable negotiable instruments, including checks, are generally classified as forms of commercial paper.

government, and hence are not uniform. However, under the sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, a Uniform Commercial Code (the "UCC") has been drafted as a model statute to promote the development of uniform laws among the States with respect to the law of commercial paper and other subjects. The UCC has gained wide acceptance and is given substantial weight by the courts in their interpretation of matters of law but does not constitute the law in any State until it has been enacted therein with such amendments as the State legislature deems advisable.

The provisions of the UCC have now been widely enacted by the States, most importantly by the State of New York which is the leading financial State. The references set forth below are to the provisions of the UCC as enacted in the State of New York ("N.Y. UCC" or the "New York Code"). The sections referred to have been enacted in New York in a form identical to that provided in the UCC and hence may be considered reflective of the law in the United States on such matters.

I. Section 26, Bills of Exchange Ordinance Cap. 19

I have enclosed as Annex 1 hereto N.Y. UCC §§3-402,403, as currently in effect, together with the Practice Commentary, Official Comment (reprinted from the UCC) and New York Annotations thereto which appear in McKinney's Consolidated Laws of New York Annotated ("McKinney's"). In New York a signature on a negotiable instrument is an indorsement unless it is clearly indicated that the signature is made in another capacity. N.Y. UCC §3-402. Section 3-403 of the New York Code governs questions relating to signatures by authorized agents or other representatives and hence, is the New York counterpart of Section 26 of the Bills of Exchange Ordinance, Cap. 19 of Hong Kong ("Section 26"). Under N.Y. UCC §3-403, an authorized representative is not personally obligated on a negotiable instrument for a signature made in a representative capacity, provided such capacity is properly demonstrated in the instrument. This appears to accord generally with Section 26 as described in the materials annexed to your letter of inquiry of February 15.

As to the question of what form a signature may take to demonstrate properly the representative capacity, the law in New York may differ somewhat from that of Hong Kong in a manner which explains the American practice referred to on page 2 of the Interim Report on Topic 6 - "Commercial Law Bills of Exchange" of 3 December 1981. Although N.Y. UCC §3-403(2)(b) provides, as Section 26 appears to, that, except as otherwise established between the immediate parties, in the case of a signature which shows that it was affixed in a representative capacity, without naming the person represented, the signatory will be held personally liable; under N.Y. UCC §3-403(3), representative capacity is properly established merely where the name of an organization is preceded or followed by the name and office of the signatory on behalf of that organization, unless it is otherwise established that such individual has not signed in a representative capacity. Accordingly, an officer of a corporation who executes a check on its

behalf "XYZ Corporation, John Doe, Assistant Vice President" would not be personally liable on that check under the law of New York absent establishing that he had not signed in such capacity.

II. Section 49(1), Bills of Exchange Ordinance Cap. 19

The New York law governing notices of dishonor of negotiable instruments is set forth in N.Y. UCC §3-508, but that Section must be construed in conjunction with other Sections of the New York Code. I have enclosed as Annex II hereto copies of that and other relevant Sections of the New York Code, together with the Practice Commentaries, Official Comments (reprinted from the UCC) and New York Annotations as set forth in McKinney's with respect thereto.

As to the timeliness of a notice of dishonor N.Y. UCC §3-508(2) governs and differs from Section 49(1) of the Bills of Exchange Ordinance, Cap. 19 of Hong Kong. That subsection provides that "any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor". In this regard, it should be noted that the "midnight deadline" of a bank is defined elsewhere in the New York Code as "midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later". N.Y. UCC §4-104(1)(h).

"Necessary notice" is explained by N.Y. UCC §3-501(2) which states that, unless excused, notices of dishonor are necessary to charge (i) any indorser and (ii) in limited circumstances relating to insolvency, any drawer and the acceptor of a draft, or the maker of a note, payable at a bank. The circumstances in which notice of dishonor otherwise necessary is excused are set forth at N.Y. UCC §3-511. These circumstances are numerous, perhaps the most important being that a waiver of notice embodied in the instrument itself is binding upon all parties. N.Y. UCC §3-511(6). The consequences of an unexcused delay with respect to a necessary notice of dishonor is to discharge the indorser or, under limited circumstances, the drawer, acceptor or maker. N.Y. UCC §3-502.

I trust the foregoing will provide the Law Reform Commission with useful comparative information with respect to the laws of the United States for its study of the captioned matter. I would be pleased to answer any questions you may have with respect to the foregoing.

Very truly yours,

David W. Heleniak

Appendix 5

THE HONG KONG BANKERS' CLEARING HOUSE

TIME TABLE
FOR DELIVERY OF ITEMS TO CLEARING HOUSE

Unpaid Items

	Monday to Friday	Saturday
All Items	11:30 am - 1:00 pm	11:00 am - 1:00 pm

Normal Clearing Items

	Monday to Friday	Saturday
AE & EE batches	11:30 am - 3:30 pm (Early Delivery) 3:30 pm - 5:00 pm (Late Delivery)	11:00 am - 2:15 pm
FP batches	11:30 am - 6:00 pm	11:00 am - 2:45 pm

Tape/Diskette (T/D) Clearing Items

	Monday to Friday	Saturday
T/D batch once a day	6:00 pm - 8:00 pm	2:45 pm - 4:00 pm

EE batch contains vouchers requiring exception and amount encoding

AE batch contains vouchers requiring amount encoding only

FP batch contains fully proved and encoded vouchers

T/D batch contains machine sortable vouchers written on magnetic tape/diskette

4. Batching Procedures for Unpaid Clearing

4.1 General

Unpaid clearing items or returned cheques must be batched separately from normal clearing items. A pay-in slip specially designed for Unpaid Items must be used together with all unpaid items batches (UI batch).

4.2 Procedures

1. UI batches must be accompanied by an UI pay-in slip and an addlist.

2. The number of cheques in the UI batch must be stated clearly in the Item number field of the pay-in slip.

3. Cheques returned to the Clearing House for reasons of wrong delivery should be batched separately, and forwarded to the Clearing House together with other returned cheques. (Procedures to handle wrong deliveries are further discussed in Section 8.2)

4. All unpaid item batches must reach the Clearing House before 1:00 p.m. so that they can be processed between 1:00 - 2:00 p.m.

5. Sorted unpaid items are due for collection by banks everyday at 2:15 p.m.

4.3 Unpaid Items batch (UI batch)

Cheques in this type of batch must be cheques cleared on the previous working day, and not returned for reason of wrong delivery. A slip giving the reason of dishonour must accompany each voucher in the batch.

All returned cheques are processed manually in the Clearing House.

SAMPLE DATA ON THE PATTERNS ADOPTED BY LIMITED COMPANIES IN THE SIGNING OF COMPANY CHEQUES

Type of words added to indicate the capacity of the signatory / Form of Company Signature	By Company Name Chop	Pre-printed Form	Totals
(a) "For" or "For and on behalf of"; in addition to these words, some cheques also include the office of the signatory or the words "authorised signature"	32	26	58
(2) Only title of the signatory, e.g. Manager, Director, etc.	22	4	26
(3) No words indicating the signatory as agent or in a representative capacity added	9	3	12
(4) Authorised signature (only)	9	0	9
TOTAL	72	33	105

Source: The Clearing House of the Hong Kong Association of Banks