

## **RE-IMAGING THE LAW: LEGISLATIVE DRAFTING REFINED THE HARMONIZATION OF LEGAL REGIMES AND CONCEPTS**

U.S. Perspectives on Harmonization of Letter of Credit Law Through  
the UN Convention on Independent Guaranties and Standby Letters of Credit

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In 2007, the Canadian Uniform Law Conference, the Mexican Uniform Law Center, the Uniform Law Commission in the United States (the “ULC”) and the American Law Institute in the United States formed a committee (the “Committee”) to Implement the United Nations Convention on Independent Guaranties and Standby Letters of Credit (the “Convention”). This paper summarizes the work of the Committee with a view that it may be informative for efforts to harmonize various areas of commercial law among Canada, Mexico and the United States and perhaps other countries.

### **Introduction**

The Committee was formed to examine the Convention and how it may be implemented in the United States, Canada and Mexico. The Canadian representatives of the Committee reported that the Convention was generally consistent with case law in Canada addressing letter of credit practice. The U.S. representatives of the Committee reported that, with two minor exceptions, the Convention produces the same outcomes for letter of credit transactions within the scope of the Convention as under Article 5 of the Uniform Commercial Code (“Article 5”). The Mexican representatives reported that the Convention would to some extent make new law in Mexico since, as a general matter in Mexico, letters of credit are largely governed contract.

What follows in this report is a summary of (a) the Convention and the formation of the Committee, (b) the substance of the discussions of the Committee, (c) the recommendation of the U.S. members of the Committee for implementation of the Convention in the United States going into the 2009 the annual meeting of the ULC and (d) actions at and subsequent to the 2009 ULC annual meeting including the final recommendation of the U.S. members of the Committee for implementation of the Convention in the United States.

### **The Convention and the Committee**

The Convention sets forth legal rules for international independent guaranties and standby letters. The Convention was approved by the United Nations General Assembly in 1995 and came into force on January 1, 2000, when it had been adopted by Ecuador, El Salvador, Kuwait, Panama and Tunisia. Belarus, Gabon and Liberia have since adopted the Convention. The

United States has signed but has not ratified the Convention.

The Convention has been endorsed by the American Bar Association, the International Chamber of Commerce and the International Financial Services Association. The last two organizations are the primary trade organizations of banks that regularly issue letters of credit.

The Convention covers issues that are addressed by case law in Canada, by contract in Mexico, and by statute, i.e., Article 5, in the United States. However, Article 5 is for the most part broader in scope than the Convention. Article 5 addresses commercial letters of credit, i.e., those letters of credit on which a drawing is the primary means for the payment for the purchase of goods. The Convention does not address commercial letters of credit, but it does not preclude a commercial letter of credit from providing that it is governed by the Convention. In addition, the Convention addresses only international standby letters of credit, i.e. those in which any two of an applicant, an issuer, a confirmer or a beneficiary are located in different countries, as specified in the letter of credit. Article 5 also covers wholly U.S. domestic standby letters of credit.

Even in those areas in which the scope of Article 5 and the Convention overlap, both Article 5 and the Convention defer to in large part to standard practices of banks that regularly issue letters of credit. Those practices are set forth in the Uniform Customs and Practices for Documentary Letters of Credit (the “UCP”) and the International Standby Practices (the “ISP”) both promulgated by the International Chamber of Commerce. The current version of the UCP is UCP 600, and the current version of the ISP is ISP98. The Convention permits an issuer of a letter of credit to exclude the Convention’s application to the letter of credit. It also permits, like Article 5, the bulk of the provisions of the Convention to be modified by agreement, including by incorporation of the rules of the UCP or the ISP. These outcomes of permitting deferral to the UCP and the ISP are consistent with outcomes under Canadian case law and Mexican contract law.

One of the primary benefits of the Convention is that it would provide uniform, international legal rules for standby letters of credit and for independent bank guaranties, which operate much like standby letters of credit. Currently, the United States, largely through Article 5, is the only country to have codified the law of letters of credit. The laws of other countries rely upon either general contract law, as in the case of Mexico, or case law, as in the case of Canada, to provide the legal rules for letters of credit and for independent bank guaranties. In a number of countries, that law is not developed, is uncertain or is hard to find.

The Canadian Uniform Law Conference and Mexican Uniform Law Center expressed an interest in working with the American Law Institute and the ULC to see if there could be formulated a basis on which these organizations would recommend that all three countries might adopt the Convention. The Committee was formed with representatives of the Canadian Uniform Law Conference, the Mexican Uniform Law Center the American Law Institute and the ULC to achieve this objective.

## The Substance of the Committee's Discussions

The Committee focused primarily upon how the Convention's rules might vary from each country's domestic law, whether the benefits of the Convention outweighed any perceived drawbacks, and how the Convention might be implemented in each country.

### *Variances of the Convention from Domestic Law*

The Committee explored areas in which the Convention might be consistent with or might vary from each country's own domestic laws dealing with standby letters of credit and independent bank guaranties. The variances would appear to be generally minor in the cases of Canada and Mexico and in some instances would supply legal rules that do not currently exist in those countries beyond statutory interpretation and case law.

In the case of the United States, the Committee's reporter, Professor James J. White, prepared a Commentary on the Convention, comparing the provisions of the Convention with current United States law and specifically with the Official Text of Article 5, which has been enacted by the states in, with only a few exceptions, substantially uniform form. The core conclusion of the Commentary concerning the Convention and its relationship to Article 5 is stated in the first paragraph of the Commentary:

[T]he rules in the Convention are generally consistent with those in Article 5 of the UCC. Because of this congruence between Article 5 and the Convention, the adoption of the Convention by the United States will cause little change in American law. American banks, other American commercial parties and banks and commercial parties from other countries with well developed letter of credit law will profit from the widespread adoption of the Convention because it will provide modern and reliable letter of credit law for banks and others from those countries when they deal with banks and others from countries with no well developed letter of credit law.

There is, however, one instance of deviation between the Convention and Article 5. Under Article 12(c) of the Convention, an undertaking that does not state an explicit expiration date expires at the end of six years after the date of issuance of the undertaking. Under UCC section 5-106, undertakings that purport to be perpetual expire five years after the date of issuance, and those without a stated expiration date expire at the end of one year after the date of issuance.

There is also a provision of the Convention that is not found in Article 5 and that may diverge in a limited respect from state law other than Article 5. Article 18 of the Convention gives the issuer of a letter of credit a right to set off any payment owed by the issuer to the beneficiary under the letter of credit against any amount owed by the beneficiary to the issuer. Article 5 does not contain this provision, and it is uncertain whether the issuer has such a right under other state law, but the law may not be consistent with the Convention. Article 18 goes on to exclude from the issuer's right of set-off any claim by the issuer against the beneficiary that

the issuer acquired from the applicant. This provision is designed to prevent an issuer from acquiring a claim against the beneficiary with a view to avoiding the issuer's liability to the beneficiary under the letter of credit. While the provision may be justifiable as a matter of letter of credit law to confirm the strength of the issuer's undertaking to the beneficiary, nevertheless the provision may not be consistent with state law in all states in the United States.

### *Benefits and Drawbacks of the Convention*

The consensus of the Committee was that the benefits of the Convention outweighed its drawbacks. This was because the benefits of the Convention providing legal rules for countries whose standby letter of credit and independent bank guaranty law were inadequate would be significant for Canadian, Mexican and U.S. beneficiaries of letters of credit issued by issuers in those countries. Any drawbacks could be managed through the flexibility of the Convention to permit (a) "opt out" of a standby letter of credit from coverage by the Convention or (b) the Convention's provisions to be modified by the standby letter of credit or independent bank guaranty being subject to the UCP or the ISP.

Nevertheless, it was considered unlikely that the Convention would be successful unless it was adopted by the United States. This is because the U.S. delegation played a key role in the negotiation of the Convention and the Convention's provisions, with two exceptions noted above, reflect Article 5. Unless the U.S. itself adopts the Convention, other countries are unlikely to find the Convention to be credible.

### *Implementation of the Convention Generally*

Each country considered, as a general matter, how it might implement the Convention. Canada would need to have implementing legislation from its provinces and territories. As part of that implementing legislation, the Canadian Uniform Law Conference has developed domestic legislation that would conform the rules of domestic law of a province or territory for wholly domestic standby letter of credit transactions with the rules of the Convention for international standby letter of credit transactions within the scope of the Convention. Canada will likely also expand the domestic legislation to cover rules for commercial letters of credit.

Mexico would likely implement the Convention through adoption of the Convention. The process appeared to be fairly straight forward in Mexico since commercial law is federal in Mexico.

The U.S. members of the Committee identified methods that could effectively implement the Convention in the United States and reached the recommendation that is discussed in the balance of this paper.

## **Recommendation for Implementation in the United States Going into the 2009 ULC Annual Meeting**

## *Approach*

Going into the 2009 ULC annual meeting, the U.S. members of the Committee recommended that the Convention be implemented by federal legislation that addresses choice of law. The legislation would be enacted by the U.S. Congress in connection with the U.S. Senate's advice and consent for the ratification of the Convention.

The federal implementing legislation would coordinate the provisions of the Convention with state law, especially Article 5, in a way that would be transparent for users of letters of credit. The proposed legislation would accomplish this objective in two ways. First, the proposed legislation would clarify choice of law issues for letters of credit that state that they are governed by either the Convention or by the law of a particular state. If a letter of credit states that it is governed by the Convention, then the law of the Convention would apply. If a letter of credit states that it is governed by the law of a chosen state, then the law of that state, in particular Article 5, would apply and not the Convention. In that case, there would be no need to determine the extent to which the chosen state's version of Article 5 was consistent with the Convention or the Official Text of Article 5. Second, the proposed legislation would implement the Convention by validating the right of parties to choose the law of the Convention to govern their letter of credit or, if the letter of credit does not state a governing law, by implementing the Convention through the Official Text of Article 5. However, in the two instances noted above in which the Convention varies from Article 5, dealing with so-called "perpetual" letters of credit and the issuer's rights of setoff, the Convention would govern and not Article 5 or other state law.

Most letters of credit currently issued by banks in the United States do not contain a governing law clause. They typically state merely that they are subject to the UCP or the ISP. Accordingly, for those letters of credit the Official Text of Article 5, as modified in the two instances noted, would be the law that implements the Convention. Both Article 5 and the Convention permit a letter of credit to be subject to the terms of the UCP or the ISP and thereby to modify the provisions of Article 5 and the Convention.

## *Reasons for the Approach*

The approach for implementing the Convention recommended by the U.S. members of the Committee is a middle ground between two other contrasting approaches: self-execution and pre-implementation. Under the self-execution approach, the Convention would replace Article 5 for letters of credit within the scope of the Convention, creating a body of federal law that would parallel the provisions of Article 5. Under the pre-implementation approach the Convention would be implemented through state law, particularly Article 5 as already in effect in all states and the District of Columbia.

Each of the self-execution and pre-implementation approaches has advantages and disadvantages. The self-execution approach would not require federal or state implementing legislation. However, there is a disadvantage to implementation of the Convention as a self-

executing treaty: the possible uncertainty that could arise as practitioners and courts interpret the new language of the Convention in contrast to the language of Article 5. Article 5 is a well-established and well-respected source of letter of credit law, and one with which U.S. courts and U.S. practitioners are familiar. If the Convention were to be implemented as a self-executing treaty, it would preempt Article 5 with regard to the subject matter that it covers and with respect to the transactions and undertakings that are within the scope of the Convention. Because the Convention's text (as opposed to its substance) does vary from the text of Article 5, though, adoption of the text of the Convention as controlling law may arguably under some circumstances lead to uncertainty as practitioners and courts interpret the new language of the Convention. This could result in interpretations of the Convention text that vary from the substance of Article 5. This disadvantage could be compounded to the extent that practitioners and judges used to referring to Article 5 may perhaps be less likely to be aware of the Convention.

The pre-implementation approach would respect state law, in particular Article 5, but would run the risk that a foreign party to a letter of credit that wished for the letter of credit to be governed by the text of the Convention would not be confident that Article 5 would produce the same outcome as under the text of the Convention. Moreover, under the pre-implementation approach, the provisions of the Convention, dealing with perpetual letters of credit and the issuer's rights of setoff, or conflicting with terms of a particular state's Article 5 that departed from the Official Text of Article 5, would need to be self-executing even if the rest of the Convention was not. The combination of self-execution in part and pre-implementation in part would be a technique never used before by the United States in implementing a commercial treaty.

The approach recommended by the U.S. members of the Committee for the proposed federal legislation preserves the advantages of the self-execution and pre-implementation approaches while avoiding their disadvantages. Under the proposed federal legislation, parties that wish for a letter of credit to be governed by the text of the Convention may obtain that result, and parties that wish for their letters of credit to be governed by the Article 5 of a particular state may do likewise. These provisions validate the freedom of parties to a letter of credit to choose for the letter of credit to be governed by the text of the Convention or to "opt out" of the Convention, as permitted by the Convention, by choosing the Article 5 of a particular state to govern the letter of credit.

However, when a letter of credit is silent as to its governing law, the provisions of the Official Text of Article 5, including its choice of law rules, would apply, as modified by the provisions of the Convention dealing with perpetual letters of credit and the issuer's setoff rights. Under the choice of law rules of the Official Text of Article 5, a letter of credit issued from the United States will be governed by the substantive provisions of the Official Text of Article 5. And, if the letter of credit states that it is subject to the UCP or the ISP, the UCP or the ISP would modify substantive provisions of the Official Text of Article 5, consistent with both Article 5 and the Convention.

The approach has the advantage of preserving law that is familiar as state law as a means of implementing the Convention when the parties do not select a governing law for a letter of credit issued from the United States. It does so through federal legislation that adopts the Official Text of Article 5 as federal law but modifies it slightly as a matter of federal law to take into account the perpetual letter of credit and issuer setoff provisions of the Convention. In addition, it respects the ability of the parties further to modify the terms of a letter of credit by incorporating the terms of the UCP or the ISP even if a governing law is not stated in the letter of credit. The approach was favored by the letter of credit industry advisors to the Committee who felt that the approach would alleviate concerns from the industry that self-execution of the Convention could lead to uncertainty as practitioners and courts interpret the new language of the Convention in contrast to the Official Text of Article 5.

The U.S. members of the Committee did not recommend any changes to the Official Text of Article 5 to conform the Official Text to the provisions of the Convention dealing with perpetual letters of credit and the issuer's rights of setoff. The U.S. members of the Committee felt that these provisions were of little practical importance for issuers and users of letters of credit and that the benefits of technical amendments, to be promulgated by both the ULC and the American Law Institute and adopted on a state by state basis, were not of such significance as to merit that effort.

### **Actions At and Following the 2009 ULC Annual Meeting including the Committee's Final Recommendation**

#### *Actions at the Annual Meeting*

At the 2009 ULC annual meeting, there was a good deal of discussion as to the section of the proposed legislation that provided the choice of law rule if the letter of credit does not state a governing law. A number of Commissioners felt strongly that, if a letter of credit issued from a particular state in the United States did not state a governing law, the law of that state should govern the letter of credit, in particular the Article 5 as enacted in that state, rather than, as federal law, the Official Text of Article 5. Under this approach, the Official Text of Article 5 would apply as federal law only if and to the extent that the law of the Article 5 as enacted by that state varied from the uniform version of Article 5 for a letter of credit within the scope of the Convention and produced a different outcome than under the Convention.

After considerable debate at the annual meeting, the following motion was approved by the ULC at the annual meeting:

1. The Committee should consider whether Section 5(b) of the proposed federal legislation [addressing the choice of law rule when the letter of credit does not state a governing law] should be amended so that the law that implements the Convention is the applicable state's version of Article 5 rather than federal law consisting of the Official Text of Article 5. The Committee should report to the Executive Committee the

Committee's recommendation whether to retain the current Section 5(b) or to propose the state law implementation alternative in a form approved by the Committee.

2. The Executive Committee will have the discretion whether to approve the Committee's recommendation. If the Executive Committee approves the Committee's recommendation, no further action will be required for the Committee's report to be accepted by the Conference. If the Executive Committee does not approve the Committee's recommendation, the Executive Committee shall determine what further action is required for the report to be accepted by the Conference.

### **Events Following the 2009 Annual Meeting**

#### **A. The Recommendation of the U.S. Members of the Committee to the ULC Executive Committee**

Following the 2009 annual meeting, the Committee held two telephone conferences in which the choice of law issue that was the subject of the motion was extensively discussed and from which a revised draft of the federal implementing legislation was produced. As a result of the Committee's deliberations, the U.S. members of the Committee continued to recommend, and so recommended to ULC the Executive Committee, that, when a letter of credit within the scope of the Convention does not state a governing law, the law that governs the letter of credit should be the Official Text of Article 5 adopted as federal law through the proposed federal legislation.

However, in a revised draft of the proposed federal implementing legislation, and in response to comments made from the floor at the 2009 annual meeting, the U.S. members of the Committee did make two important refinements to the 2009 annual meeting draft. Both of these refinements were designed to address letters of credit that implicate the law of a foreign country.

First, under the revised draft, if a letter of credit states that it is governed by the law of a foreign country, the law of the foreign country governs the letter of credit, including the Convention as implemented in the foreign country.

Second, under the revised draft, when a letter of credit does not state its governing law, it is first necessary to apply the choice of law rules of the Official Text of Article 5 as federal law to determine which jurisdiction's substantive law governs the letter of credit. If the law so determined is the law of a foreign country, then the substantive law of the foreign country governs. If the law so determined is the law of a state of the United States, then the Official Text of Article 5, and not the Article 5 as adopted by that state, governs as substantive law. For example, if the letter of credit does not state a governing law and is issued from Japan, the choice of law rules of the Official Text of Article 5 would provide that Japanese substantive law would govern the letter of credit. If the letter of credit does not state a governing law and is issued from New York, then the Official Text of Article 5 would govern as federal law.



And in the revised draft, as in the 2009 annual meeting draft, for a letter of credit that does not state its governing law, the Convention, and not Article 5 or other state law, continues to govern in the two instances noted, dealing with so-called “perpetual” letters of credit and the issuer’s rights of setoff.

B. Reasons for the Recommendation of the U.S. Members of the Committee to the Executive Committee

When a letter of credit within the scope of the Convention does not state a governing law, the U.S. members of the Committee preferred to implement the Convention through the Official Text of Article 5 as federal law for several reasons.

*Practitioners.* Many on the Committee were concerned that the use of a local Article 5 as enacted in a particular state would require lawyers to make the difficult determination whether a state had deviated far enough from the Official Text in its enactment so that the state’s version of some part of Article 5 could not be regarded as a proper implementation of the Convention. In that case one would have to look to the Official Text of Article 5 as the backup implementation. To nominate some agency to make that determination was thought to be too cumbersome, but leaving lawyers to make that determination on their own was thought to be problematic. Particular concerns were raised for opinion practice and the risk of larger transaction costs.

*Industry representatives.* The Committee was also informed that industry representatives would oppose the approach of looking to Article 5 as enacted by a particular state. The Committee advisors and observers who deal regularly with banks and others who use international standby credits reported that use of the “as enacted” model would make their constituents uneasy and might delay the project by a year or more while someone was trying to placate that constituency.

*State Department.* Mr. Harold Burman, the U.S. State Department observer to the Committee, was of the opinion that the various federal agencies that are comfortable with the use of “state law” in the form of the Official Text of Article 5 would be resistant to the explicit use of Article 5 as enacted in a particular state. The adoption of the “as enacted” model would, at minimum, require renegotiation with the U.S. Justice and Commerce Departments and might cause them to withdraw their support entirely. In contrast, Mr. Burman stated in the Committee’s conference calls that neither the Congress nor the federal agencies will regard the Official Text of Article 5 as “real” federal law. According to him there is little chance that the use of the Official Text of Article 5 as a federal law will invite the U.S. Congress to intrude further into state commercial law.

*U.S. territories and possessions.* Although Article 5 has been enacted in every state of the United States and the District of Columbia, Article 5 has not been adopted in all U.S. territories and possessions. For example, Puerto Rico has not adopted Article 5. If a U.S. territory or possession has not enacted Article 5, it would likely be necessary, even under the “as enacted” model, for the Official Text of Article 5 to apply in that territory or possession in any

event for letters of credit within the scope of the Convention.

*Drafting.* The best efforts of the reporter and of the Committee members to draft the “as enacted” language proved unequal to the task. The best that the Committee could do was to present a complicated and quite awkward provision. The Committee feared that those complications would cause lack of clarity and might invite misinterpretation.

### C. Subsequent Events

Subsequent to the recommendation of the U.S. members of the Committee to the ULC Executive Committee, and the refinement of the draft of the federal implementing legislation, the following events have occurred:

- The ULC Uniform Commercial Code Committee approved the revised draft of the federal implementing legislation on October 23, 2009.
- The draft was approved by the Permanent Editorial Board for the Uniform Commercial Code on October 24, 2009.
- The draft was presented to the American Law Institute Council for informational purposes on December 4, 2009.
- The draft was approved unanimously by the International Legal Developments Committee of the ULC on December 5, 2009.
- The draft was approved unanimously by the ULC Executive Committee on January 10, 2010.
- The draft was distributed to all Commissioners of the ULC on June 7, 2010.

The draft is currently being circulated for comment to various federal agencies with a view to the legislation being enacted by U.S. Congress in connection with adoption of the Convention by the United States.

### **The Draft Legislation**

Below is the current draft of the federal implementing legislation.

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### *An Act*

To implement the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**Section 1. Short Title.**

This Act may be cited as “Independent Guarantees and Standby Letters of Credit Convention Implementation Act of 20\_\_.”

**Section 2. Findings and Purpose.**

**(a) Findings**

- (1) Commercial financial assurances, such as commercial letters of credit, standby letters of credit and independent guarantees, are integral to commerce and trade;
- (2) Laws that promote predictable payment increase the value of such assurances, support responsible domestic and international commercial practice and reduce systemic risk and enhance safety and soundness of bank and other financial institution practices;
- (3) The United Nations Convention on Independent Guarantees and Standby Letters of Credit (the “Convention”) achieves these objectives;
- (4) Because the independence principle and other principles embodied in the Convention are already embodied in the Official Text of the Uniform Commercial Code, implementation of the Convention introduces only minor changes to uniform state law in the United States. Article 5 of the Uniform Commercial Code, entitled “Letters of Credit,” codifies the law of commercial and standby letters of credit, including undertakings commonly referred to as independent guarantees;
- (5) Federal and State law bodies in the United States as well as banking and import-export interests were leaders in the development of the Convention;
- (6) Implementation of the Convention by the United States would further the uniformity and harmonization of international commercial and financial law.

**(b) Purpose.**

The purpose of this Act is to implement the Convention in the United States. This Act does that by giving effect to the choice of law provisions of the Convention and of Article 5 of the UCC.

**Section 3. Definitions.** In this Act,

(a) “Convention” means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

(b) “Foreign Jurisdiction” means a jurisdiction other than the United States or a State.

(c) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(d) “UCC” or “Uniform Commercial Code,” means the 2009 Official Text of the Uniform Commercial Code promulgated by American Law Institute and the Uniform Law Commission.

**Section 4. Scope.** This Act applies only to an international independent undertaking that is within the scope of the Convention and to which the Convention applies (“undertaking”).

**Section 5. Implementation of the Convention in the United States.**

**(a) Undertakings that Choose the Convention as Applicable Law.** An undertaking that expressly states that it is governed by the Convention shall be governed by the text of the Convention as the applicable law.

**(b) Undertakings that Choose the Law of a Foreign Jurisdiction as Applicable Law.** An undertaking that expressly states that it is governed by the law of a Foreign Jurisdiction shall be governed by the law of that Foreign Jurisdiction, including the Convention if and as implemented in that Foreign Jurisdiction.

**(c) Undertakings that Choose State Law as Applicable Law.** An undertaking that expressly states that it is governed by the law of a State shall be governed by the law of that State and not by the Convention.

**(d) Undertakings that do not Choose Applicable Law.**

(i) An undertaking that does not choose applicable law is governed by the law of the obligor’s location as determined by Section 5-116(b) of the UCC.

(ii) Where that location is a Foreign Jurisdiction, the law of that Foreign Jurisdiction governs, including the Convention if and as implemented in that Foreign Jurisdiction.

(iii) Where that location is a State, Article 5 of the UCC governs as the law that implements the Convention in the United States, except that:

(A) Article 12(c) of the Convention, and not Section 5-106(c) or (d) of the UCC, shall govern the duration of the undertaking and

(B) Article 18 of the Convention shall govern the issuer's right of setoff.

**Section 6. Effective Date and Preservation of Prior Rights.** This Act shall take effect on the date on which the Convention enters into force with respect to the United States. This Act applies to undertakings issued on and after the effective date of this Act. This Act does not apply to a transaction, event, obligation or duty arising out of or associated with an undertaking that was issued before the effective date of this Act.

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