

U.N. CONVENTION ON INDEPENDENT GUARANTEES
AND STAND-BY LETTERS OF CREDIT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

UNITED NATIONS CONVENTION ON INDEPENDENT GUARANTEES
AND STAND-BY LETTERS OF CREDIT (CONVENTION), DONE AT
NEW YORK ON DECEMBER 11, 1995, AND SIGNED BY THE
UNITED STATES ON DECEMBER 11, 1997



FEBRUARY 10, 2016.—Treaty was read the first time, and together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PUBLISHING OFFICE

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *February 10, 2016.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, subject to certain understandings set forth in the enclosed report, I transmit herewith the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit (Convention), done at New York on December 11, 1995, and signed by the United States on December 11, 1997. The report of the Secretary of State, which includes an overview of the proposed Convention, is enclosed for the information of the Senate.

As a leader in transactional finance, the United States participated in the negotiation of this Convention at the United Nations Commission on International Trade Law with the support of U.S. commercial and financial interests. The Convention establishes common rules on stand-by letters of credit and other independent guarantees, instruments that are essential to international commerce, and thereby reduces the uncertainty and risk that may be associated with cross-border transactions. With two minor exceptions, the Convention's provisions are substantively similar to the uniform State law provisions in the Uniform Commercial Code Article 5 (Letters of Credit), which all States and the District of Columbia, Puerto Rico, and the Virgin Islands have enacted.

Ratification by the United States of this Convention can be expected to encourage other countries to become parties to the Convention. While eight countries currently are parties to the Convention, having a greater number of parties to the Convention would promote the stability and efficiency of international commerce.

The Convention has been endorsed by leading banking and business associations in the United States.

The Convention would be implemented through Federal legislation to be separately transmitted by my Administration to the Congress.

I recommend, therefore, that the Senate give early and favorable consideration to the Convention and give its advice and consent to its ratification, subject to certain understandings set forth in the enclosed report.

BARACK OBAMA.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 8, 2014.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit, subject to the understandings set forth in the enclosed overview of the Convention. The Convention, which was adopted in New York on December 11, 1995, was signed by the United States on December 11, 1997, and came into force on January 1, 2000. Eight countries currently are parties to the Convention.

The Convention promotes international commerce, as well as the safety and soundness of banking practices, by establishing common rules on stand-by letters of credit and other independent guarantees, instruments that are essential to international commerce. The Convention is consistent with modern rules governing these instruments, including rules that give effect to the choice of law decisions of transacting parties. With two minor exceptions, the Convention's provisions are substantively similar to the uniform state law provisions in Uniform Commercial Code Article 5 ("Letters of Credit") which all U.S. states and the District of Columbia, Puerto Rico, and the Virgin Islands have enacted.

The Convention has been endorsed by leading associations and organizations in the United States, including the American Bar Association; the now merged Bankers' Association for Finance and Trade and the International Financial Services Association, which together are the American Bankers Association affiliate focused on international letter of credit operations; the United States Council on International Business; and the Institute for International Banking Law and Practice.

The Uniform Law Commission and the American Law Institute support U.S. ratification of the Convention. These two entities formulate the Uniform Commercial Code. The International Chamber of Commerce also endorses the Convention and has recommended that its national committees and their banking and trade finance members, representing all internationally active bank issuers, promote the ratification of the Convention in their various countries.

The United States is a leader in transactional finance, and its ratification of this Convention can be expected to encourage other countries to become party to the treaty. Having a greater number of parties to the Convention would promote the stability and efficiency of international trade.

The Convention will not be self-executing, and would be implemented through federal legislation.

I recommend, therefore, that you transmit the Convention to the Senate for advice and consent to ratification.

Respectfully submitted.

JOHN F. KERRY.

Enclosures: As stated.

**Article Overview:
United Nations Convention on Independent Guarantees
and Stand-by Letters of Credit**

The United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (“Convention”) sets forth basic legal rules governing stand-by letters of credit and other independent guarantees, essential instruments of international trade and commerce.

In particular, commercial and stand-by letters of credit are used in international commerce to provide more certainty of payment between transacting parties. Issued on behalf of an importer, a commercial letter of credit assures a supplier that it will be paid for the goods ordered, provided that evidence is available that the letter of credit’s terms and conditions are satisfied. On the other hand, “stand-by letters of credit” perform a different function by providing payment to cover loss when a specified event happens or fails to happen. For example, a bank may issue a stand-by letter of credit on behalf of a customer to provide assurances of his ability to perform under the terms of a contract between the customer and a third party (the beneficiary). The stand-by letter of credit assures the beneficiary of the performance of the customer’s obligation, as the beneficiary is able to draw under the credit upon the presentation of the documents specifically required by the stand-by letter of credit. Such letters of credit “stand” behind monetary obligations, ensure the refund of an advance payment, support performance and bid obligations, or insure the completion of a sales contract. In other countries, these types of instruments are known as “demand guarantees.”

However titled, these instruments provide a high level of assurance that banks will honor payment demands when made in conformity with the undertakings, an assurance that increases the value of such instruments as collateral. Their higher certainty of payment is based on their “independence” from the underlying contractual obligations that they support; that is, the obligation to pay is established by conformity to the letter of credit instrument itself, not a separate examination of the degree to which a transaction has met its underlying purposes.

The Convention’s provisions are substantively similar to enactments of the uniform state law in the United States, which in turn are based on the Uniform Commercial Code (“UCC”) Article 5 (“Letters of Credit”). All states of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands have passed laws based on Article 5 of the UCC.

The Uniform Law Commission, on which all states are represented, together with representatives of the American Law Institute, the American Bar Association, the merged International Finance Services Association and Bankers' Association for Finance and Trade, and other organizations support U.S. ratification of the Convention.

The Administration intends to propose legislation separately to implement the Convention.

I. ARTICLE-BY-ARTICLE SUMMARY OF THE CONVENTION

Certain Commonly Used Terms in this Summary

"UCC" or "Uniform Commercial Code," means the Uniform Commercial Code promulgated by the Uniform Law Commission and the American Law Institute. Unless otherwise indicated, reference to "UCC Article 5" is to the 2012 Official Text of UCC Article 5 (entitled "Letters of Credit") rather than to a particular state's enactment of UCC Article 5.

"UNCITRAL Explanatory Note" means the "Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit." It is a summary of the Convention prepared by the Secretariat of the United Nations Commission on International Trade Law ("UNCITRAL"). The U.S. delegation and industry experts participated in and approved the Explanatory Note, and the United States has no objections to its content.

"ICC Rules" means the three sets of International Chamber of Commerce rules that are applied by banks and financial institutions to manage letters of credit. Together they are known in the industry as standard banking practice rules, and include the Uniform Customs and Practice for Documentary Credits ("UCP"), the Uniform Rules for Demand Guarantees ("URDG"), and the International Stand-by Practices ("ISP"). Uniform state law in the United States defers to these rules when they are applicable.

"State" as used herein means a country and "State Party" means a country for whom the Convention is in force.

Article 1. Scope of Application

Article 1(1) provides that the Convention applies to an international independent “undertaking” as described in *Article 2* issued from, or otherwise governed by the law of, a State Party to the Convention. The Convention does not apply where an undertaking expressly excludes the application of the Convention.

Article 1(2) provides that the Convention applies if an international letter of credit not covered by *Article 2* expressly states that it is subject to the Convention.

Article 1(3) provides that the choice-of-law rules and conflict-of-laws’ rules in the Convention (*Articles 21* and *22*) apply to all such undertakings regardless of whether they satisfy the criteria in *Article 1(1)*.

Article 2. Undertaking

“Undertaking” is the term used by the Convention and the UCC and by the industry to refer to these financial arrangements. It is defined in *Article 2(1)* for the purposes of the Convention as an “independent” commitment, known in international practice as a stand-by letter of credit or independent guarantee given by a bank, other institution or a person, to pay the beneficiary a sum certain or determinable in accordance with the terms of the instrument upon the presentation of specified documents.

Article 2(1) limits the scope of application of the Convention to undertakings that require payment upon presentation of a demand, with or without accompanying documents; the term “undertaking” thus fits within the definition of “letter of credit” in UCC Article 5-102(a)(10). The definition of “undertaking” in the Convention has the effect of excluding other types of guarantees from the scope of this Convention. *Article 2(1)* also has the effect of distinguishing stand-by letters of credit from commercial letters of credit and therefore excludes commercial letters of credit from the scope of the Convention unless parties expressly make the latter subject to the Convention (see *Article 1(2)*).

Articles 2(2), *2(3)*, and *2(4)* provide, among other things, that non-banks may issue undertakings, that issuers may act also as applicants and trustee beneficiaries, and that undertakings may be honored by sight or deferred payment, acceptance of a time draft, or supply of a specified item of value. Substantially similar provisions are contained in the UCC Article 5-102 definitions of “issuer,” “letter of credit,” and “honor.”

As used in this Article-by-Article analysis, the term “applicant” also means the “principal” depending on the type of instrument used, and the term “issuer” also means a “guarantor” depending on the type of instrument used.

Article 3. Independence of Undertaking

Article 3 defines what is considered an “independent” undertaking for the purposes of the Convention.

The Convention applies to stand-by letters of credit and other independent guarantees and not to dependent guarantees and suretyship obligations that require or permit consideration of the underlying transaction when determining whether to honor a demand for payment. Usually referred to as dependent or accessory undertakings, the latter serve a different market in commercial finance and are not affected by the Convention. *Article 3* is consistent with UCC Article 5-103(d) concerning the separateness of the obligation of an issuer to the beneficiary, from that of the underlying obligation of the applicant to the beneficiary.

The UNCITRAL Explanatory Note (paragraph 9) emphasizes that for an independent undertaking covered by the Convention the “guarantor/issuer is not called on to investigate the underlying transaction, but is merely to determine whether the documentary demand for payment conforms on its face to the terms of the guarantee or stand-by letter of credit.” This is the same principle that underlies letter of credit law in the United States. United States negotiators intended that, for a transaction to qualify as an “independent” undertaking for purposes of the Convention, it would effectively need to fit within the well-settled definition of “letter of credit” in UCC Article 5 (which covers independent guarantees, as well as stand-by and commercial letters of credit).

Article 4. Internationality

Article 4 defines “internationality” for purposes of the Convention. Purely domestic undertakings are outside the scope of the Convention. The Convention applies only to undertakings that specify that at least two of the following parties are in different countries: the issuer, beneficiary, applicant, instructing party, or confirmer. *Article 4* also contains supplementary rules to apply this provision.

Article 5. Interpretation

Article 5 provides that in the interpretation of the Convention, regard is to be

had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit.

These rules of interpretation are consistent with the rule of interpretation in *Article 13(2)* of the Convention, the ICC Rules, UCC Article 5-108(e) (which obligates issuers to observe standard practice), and UCC Article 5-116(c) (which gives effect to incorporated practice rules). For example, courts in the United States have generally considered compliance with the ICC rules cited in letter of credit practice to constitute evidence of good faith by the party.

Article 6. Definitions

Article 6 sets forth definitions of certain terms in the Convention. These definitions are consistent with the definitions in UCC Article 5-102 and the ICC rules. The term “counter-guarantee,” for example, which is one of the defined terms in the Convention, is widely used outside the United States to refer to an undertaking that requests the beneficiary (typically an overseas bank) to issue a separate undertaking (typically to a local buyer). This type of undertaking is treated as a letter of credit under UCC Article 5 and the ICC banking rules.

In negotiating this Convention, the United States sought to ensure that, with minimal exceptions, the Convention’s rules maintain the same market effects of modern letter of credit laws as achieved by the UCC rules or comparable rules in other countries. To achieve that economic result, the terms used in the Convention were intended to have the same meaning as the same or similar terms as used in the UCC. In addition, the meaning of terms used in the Convention would under *Article 13(2)* also be informed by generally accepted international rules and usages of practice regarding independent guarantees and stand-by letters of credit.

To clarify this very important aspect of the definitions, it is recommended that the United States ratify the Convention subject to the following understanding:

It is the understanding of the United States that terms used but not defined in the Convention have the same meaning as the same or substantially similar terms in Article 5, entitled “Letters of Credit,” of the 2012 Official Text of the Uniform Commercial Code (“UCC”).

Article 7. Issuance and irrevocability

Article 7 provides the basic rules on establishment of an undertaking.

Article 7(1) provides that an undertaking is issued when it leaves the sphere of control of the issuer; at that point, the undertaking is effective and is available for payment under *Article 7(3)*. The laws of states of the United States contain substantially similar provisions, as reflected in UCC Articles 5-104 and 5-106(a).

Article 7(2) provides that an undertaking may be issued in any form which preserves a complete record of the text of the undertaking and provides authentication of its source by generally accepted means or by a procedure agreed upon by the issuer and the beneficiary. This provision encompasses cases where an undertaking permits the use of electronic issuance or documentation. Under standard industry practice, electronic issuance of undertakings generally must be permitted under the terms of the undertaking or applicable practice (see *Article 15*).

Article 7(4) provides that an undertaking is irrevocable upon issuance, except to the extent otherwise provided in the undertaking.

Article 8. Effectiveness of amendments

Article 8 provides the rule on amendment of an undertaking and when an amendment is effective as to various parties. Unless an undertaking provides for automatic amendment or otherwise so permits, an amendment proffered by the issuer is effective only when the issuer receives the beneficiary's acceptance and does not affect the applicant or any confirmer unless such person consents. UCC Article 5-106(b) contains substantially similar provisions.

Article 9. Transfer of rights to payment

Article 9 provides that a beneficiary's drawing rights may be transferred only to the extent permitted in the undertaking. This rule preserves the expectations of the issuer and applicant in letter of credit practice. UCC Article 5-112 contains substantially similar provisions.

Article 10. Assignment of Proceeds

Article 10 permits a beneficiary to assign its rights to proceeds. Paragraph (2) provides that an issuer that pays an assignee after due notification of the beneficiary's assignment is discharged from its liability to the extent of the payment. *Article 10* does not specify, however, whether the issuer is obligated to

pay the assignee or whether the issuer may choose to pay the assignor-beneficiary instead. The Convention leaves that question and related matters to be governed by other sources of law, which may include secured transactions law or applicable banking industry standards. UCC Article 5-114 contains substantially similar provisions.

Article 11. Cessation of Right to Demand Payment

Article 11 sets forth rules on when the right of the beneficiary to demand payment under the undertaking ceases, thus providing certainty as to the extent of an issuer's obligations.

Article 11(1) provides that the right of the beneficiary to demand payment ceases when the issuer has received a statement by the beneficiary of release of liability, the beneficiary and the issuer have agreed on the termination of the undertaking, the amount available under the undertaking has been paid, or the period of validity of the undertaking has expired. It thus affirms that presentation of the demand for payment has to occur prior to the expiry of the undertaking.

Article 11(2) further provides that an undertaking may stipulate, or the issuer and the beneficiary may agree elsewhere, that return of the document or its equivalent if in non-paper form embodying the undertaking is necessary for the cessation of the right to demand payment; however, in no case does retention of the instrument prolong the right to demand payment if the amount available already has been paid or if the undertaking has expired.

Uniform state law enactments of UCC Articles 5-106 and 5-108 treat expiry of the undertaking as an absolute limitation to payment, so *Article 11* would produce results consistent with these state law enactments.

Article 12. Expiry

Article 12 provides that the validity period of an undertaking expires (a) at the expiry date, which may be a fixed date or the last day of a fixed period stipulated in the undertaking; (b) if expiry depends on the occurrence of an act or event, upon presentation of the document called for in the undertaking to indicate the occurrence of the act or event, or if no such document is called for, by presentation by the beneficiary of certification for that purpose; or (c) after six years from issuance, if no expiry date has been stipulated or if the stipulated expiry act or event has not occurred.

Thus under the Convention, undertakings cannot operate in perpetuity, and those undertakings without fixed expiration dates expire after 6 years. By way of contrast, under UCC Article 5-106, undertakings that fail to provide for expiry are deemed to expire after one year and those undertakings that purport to be perpetual are deemed to expire after 5 years.

Were the United States to ratify the Convention, implementation of the Convention's rule on duration of the undertakings – which differs from UCC Article 5-106 – would have minimal effect on U.S. practice, because U.S. banks rarely issue cross-border undertakings that fail to provide for an expiry date, and the six-year rule is acceptable to U.S. banking institutions engaged in this practice.

Article 13. Determination of Rights and Obligations

Article 13(1) provides that the rights and obligations of the issuer and the beneficiary arising from the undertaking are determined by the terms and conditions set forth in the undertaking, including any rules, general conditions, or usages specifically referred to therein, and by the provisions of the Convention.

Article 13(2) provides that in interpreting terms and conditions of an undertaking and in settling questions that are not addressed by the undertaking or by the Convention, regard shall be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice.

As explained in the UNCITRAL Explanatory Note, *Article 13* makes express reference to evolving rules of practice, general conditions or usages that may be incorporated into an undertaking, or that may be considered in interpreting an undertaking or in settling questions not addressed by the Convention. In this connection, banks and financial institutions apply three primary sets of practice rules to manage letters of credit: the ICC Uniform Customs and Practice for Documentary Credits (“UCP”), the ICC Uniform Rules for Demand Guarantees (“URDG”), and the ICC International Stand-by Practices (“ISP”).

Articles 5-108(a) and (e) of the UCC set forth a substantially similar approach to determination of the rights and obligations of the parties.

Article 14. Standard of Conduct and Liability of Guarantor/Issuer

Article 14(1) provides that in discharging their obligations, issuers “shall act

in good faith and exercise reasonable care having due regard to generally accepted standards of international practice.” The results reached under this formulation are consistent with those reached under the provisions of UCC Article 5.

As proposed to be clarified in a U.S. understanding concerning the definitions in *Article 6* of the Convention, terms of the Convention not expressly defined therein but used in UCC Article 5 should be interpreted as applied under the UCC. Accordingly, were the United States to ratify the Convention, any claim or defense that is based on “good faith” should in the United States be tested under the definition of “good faith” in UCC Article 5-102.

As to the standard of “reasonable care” under *Article 14(1)*, observance of standard ICC rules in letters of credit has in the United States generally been determined to constitute the exercise of reasonable care, unless an issuer has undertaken to do more or less than is standard practice. In addition, the Convention has particular performance requirements relating to honoring a strictly complying demand under *Articles 14, 15 and 17*; an issuer’s claim that it exercised reasonable care would not be a defense to not complying with those specific requirements. The provisions of UCC Article 5-108 produce substantially the same result.

Article 14(2) prohibits an issuer from being exempted from liability arising from its failure to act in good faith or for any grossly negligent conduct. UCC Article 5-103(c) achieves the same results, and limits disclaimers of UCC Article 5-108 obligations to honor strictly complying presentations and to observe standard practice, by requiring that any such disclaimer be specific, thus limiting the effectiveness of any general disclaimer (e.g., of good faith) or general indemnity (e.g., against negligence).

Article 15. Demand

Articles 15(1) and (2) provide rules on presenting demands for payment. *Article 15(1)* provides that the demand must conform to the terms and conditions of the undertaking, which may include terms about where and when presentation may be made, and provides that the form of a demand must comply with *Article 7(2)*. As to form, if the undertaking and applicable practice do not authorize the use of non-paper or non-original documents, an attempted electronic or other such presentation would be non-complying under the Convention. This is the same rule that is contained in the UCC.

Article 15(3) provides that the beneficiary, when demanding payment, is deemed to certify that its demand is not in bad faith and not fraudulent or abusive in accordance with standards set forth in *Article 19*. This implied beneficiary certification is substantially similar to the “no fraud” warranty provided in UCC Article 5-110(a)(1). The beneficiary’s certification under *Article 15* (comparable to a warranty under the UCC) would be understood in standard letter of credit practice to cover dishonesty in intent and practice, not technical falsity in a document presented by the beneficiary. Whether, when, how, and by whom a breach of a beneficiary’s certification may be remedied is not specified in the Convention and is therefore governed by other law. These provisions are consistent with UCC Article 5-110.

Article 16. Examination of Demand and Accompanying Documents

Article 16(1) sets out the widely recognized standard of “facial conformity” for demands for payment, i.e., that a presentation by the beneficiary seeking the honoring of the terms of the undertaking must on its face appear to comply with the terms and conditions of the undertaking (including incorporated or otherwise applicable practice rules). The UCC, Article 5-108(a), contains substantially similar requirements for an issuer’s examination of a presentation.

Article 16(1) also requires the issuer to examine a presentation to determine whether the documents are consistent with one another, having due regard to the applicable international standard of practice (sometimes referred to as “no conflict”).

Article 16(2) provides default rules regarding the timing and manner in which an issuer who decides not to pay must proceed. These rules apply unless otherwise agreed by the issuer and the beneficiary, and are consistent with UCC Article 5-108(b). The UCP, ISP, and URDG contain more detailed rules that, if incorporated in or otherwise applicable to the undertaking, would provide supplemental guidance. For example, the default rules in *Article 16(2)* require the issuer to give a timely notice of dishonor, but do not specify the consequences of an issuer’s failure to give such notice or to give its reasons for dishonor in the notice. In the United States, the preclusion rule in UCC Article 5-108(c) would, if applicable, fill that gap, as would the preclusion provisions in international banking rules (UCP600 Article 16, ISP98 Rule 5, and URDG 758 Article 24).

Article 17. Payment

Article 17(1) sets out the basic obligation to pay promptly a demand made in accordance with *Article 15*, unless otherwise agreed. *Article 17(2)* preserves the rights of the applicant of a letter of credit in case a demand is not in accordance with *Article 15*, but does not specify any particular rights that the applicant may have after a payment is made that is not required by the Convention. Those rights would be found in the agreements of the parties, in applicable practice rules, or in other applicable law, e.g., state enactments of UCC Article 5-108(i).

Article 18. Set-off

Article 18 provides that, unless the undertaking provides otherwise, the issuer may discharge the payment obligation by exercising a right of setoff, except with respect to any claim assigned to it by the applicant. UCC Article 5 does not contain such a provision, since it was considered unnecessary as rights of setoff exist in all jurisdictions in the United States as a matter of common law, and nothing in UCC Article 5 requires a different result. While there are limited circumstances where this difference between the Convention and UCC Article 5 would be material, this provision in the Convention could lead to a different result than UCC Article 5, depending on the otherwise applicable law.

Article 19. Exception to Payment Obligation

Article 19 provides for limited exceptions to the obligation of the issuer to make payment to a beneficiary, in order to ensure payment of a complying demand absent extraordinary grounds. This Article and *Article 20* are the only exceptions to the “independence” principle set forth in *Article 2*, i.e. the only circumstances and grounds on which examination of facts outside the documents are permitted.

As explained in the UNCITRAL Explanatory Note, *Article 19(1)* provides “an internationally agreed definition of the types of situations in which an exception to the obligation to pay against a facially compliant demand would be justified. The definition encompasses fact patterns covered in different legal systems by notions such as ‘fraud’ or ‘abuse of right’.” In particular, the definition refers to situations in which it is manifest and clear that (a) any document is not genuine or has been falsified, (b) that no payment is due on the basis asserted in the demand, or (c) that the demand has no conceivable basis. The scope of the definition in *Article 19* is substantially the same as the “material fraud and forgery” exception stated in UCC Article 5-109(a).

Since *Article 19* is silent as to the rights of the issuer against parties other

than the beneficiary, the Convention would have no impact on such rights, and other law, including, for example, state enactments of UCC Article 5-109, would determine whether an extraordinary defense may be asserted against any other party, *e.g.*, against any confirmer or other person nominated in an undertaking.

Article 19(3) provides that under the circumstances described in *Article 19(1)*, in addition to rights of an issuer to not make payment, an applicant is entitled to seek provisional court measures under *Article 20*.

Article 20. Provisional Court Measures

Article 20, read together with *Article 19*, provides limited grounds for provisional court orders enjoining or attaching payment under an undertaking.

Article 20(1) provides that where, on an application by the principal or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the fraud and abuse grounds referred to in *Article 19(1)* is present, the court, on the basis of immediately available strong evidence, may (a) issue a provisional order to the effect that the beneficiary does not receive payment, or (b) issue a provisional order blocking the proceeds of the undertaking paid to the beneficiary, taking into account whether in the absence of such an order the principal would be likely to suffer serious harm.

Article 20(3) provides that a court may not issue such a provisional order based on any objection to payment other than the fraud and abuse grounds identified in *Article 19(1)*, or based on “use of the undertaking” for a criminal purpose.

The last clause was intended to cover a limited range of cases where the act of payment itself could be subject to criminal law, and not as a general reference to alleged legality or non-legality of the underlying transaction. Accordingly, it is recommended that the United States ratify the Convention subject to the following understanding:

It is the understanding of the United States that the phrase “or use of the undertaking for a criminal purpose” applies only to cases where the act of payment of the independent undertaking itself would violate criminal law, such as foreign exchange control laws that would

prohibit or regulate certain payments, and not to circumstances involving the alleged nature of an underlying transaction.

Article 21. Choice of Applicable Law

Chapter VI of the Convention (*Articles 21* and *22*) supplies the rules to be followed in identifying the law applicable to an independent guarantee or stand-by letter of credit, and thus provides an additional level of harmonization in the field of international undertakings. These rules apply whether or not in a particular case the Convention is the substantive law for the stand-by letter of credit in question.

Article 21 provides that the undertaking is governed by the law the choice of which is stipulated in, or demonstrated by the terms and conditions of the undertaking, or agreed elsewhere by the issuer and the beneficiary. The effect of this provision is to allow transacting parties to choose the governing law without imposition of additional requirements such as a “nexus” between the transaction and the chosen law. As reflected in UCC Article 5-116(a), which likewise gives full effect to the parties’ choice of law, certainty with respect to the choice of law provision in an undertaking is of fundamental importance for this area of practice.

Despite the express language of *Article 21*, it is possible that foreign rules or courts may seek to impose additional requirements that defeat the parties’ choice of law. Given the centrality of this provision for the operation of the Convention, it is recommended that the United States ratify the Convention subject to the following understanding:

It is the understanding of the United States that pursuant to Article 21, an undertaking that includes either an express choice of law or a choice of law that is demonstrated by the terms and conditions of the undertaking or otherwise, shall be governed by the chosen law, without imposition of additional requirements such as a nexus between the transaction and the chosen law.

Article 22. Determination of Applicable Law

Article 22 sets forth provisions in the event that the parties have not chosen an applicable law. It provides that in such cases the undertaking is governed by the

law of the country where the issuer has the place of business at which the undertaking was issued.

The Convention and UCC Article 5-116(b) state substantively similar conflict-of-laws rules. The Convention rule pointing to the place of business at which the undertaking was issued is expressed differently under the UCC but the same result is achieved. Both focus on the obligor's (issuer's) location.

In order to support these expectations, it is recommended that the United States ratify the Convention subject to the following understanding:

It is the understanding of the United States that the phrase in Article 22 of the Convention "where the guarantor/issuer has that place of business at which the undertaking was issued" has the same meaning in the United States as the phrase "the jurisdiction in which the person is located" as used in Section 5-116(b) of the Uniform Commercial Code (2012).

Article 23. Depositary

The Secretary-General is the depositary for this Convention.

Articles 24 and 28. Signature, Ratification and Entry into Force

Pursuant to *Article 28*, the Convention, which requires five states to consent to be bound for it to enter into force, entered into force January 1, 2000.

Article 28(3) provides for prospective application only of the Convention, *i.e.*, the Convention would only apply to an undertaking issued on or after the Convention enters into force for the country from which the undertaking is issued or the country whose law otherwise applies to the undertaking.

Article 25. Application to Territorial Units

Article 25 permits a State to declare that it will apply the Convention to some but not all its political units where different systems of law are applicable to the matters covered by the Convention. Since the UCC's provisions on letters of credit have been adopted by all states of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands, and because a uniform market for

banking and trade instruments is very important, we do not intend to make such a declaration.

Articles 26 and 27. Declarations and Reservations

Article 26 contains rules regarding declarations.

Article 27 provides that no reservations may be made to the Convention.

Article 29. Withdrawal

Pursuant to *Article 29*, a State may withdraw from the Convention effective one year from the first day of the month following notice to the depositary or after such longer period as may be stated by the withdrawing State.

II. FEDERAL IMPLEMENTING LEGISLATION

The Administration has consulted closely with the Uniform Law Commission and other interested stakeholders, including those in the banking industry, on changes to applicable U.S. law that would be needed to allow the United States to implement the obligations contained in the Convention. On the basis of these consultations, the Administration proposes to implement the Convention in the United States through federal legislation. The Administration's proposal is similar to draft federal implementing legislation approved by the ULC Executive Committee in January 2010. As noted by the relevant ULC Committee in its report of June 4, 2010 on the implementation of the Convention, the federal implementing legislation "would coordinate the provisions of the Convention with state law, in particular Article 5 [of the UCC], in a way that would be transparent for users of letters of credit."

The federal legislation to be proposed would accomplish this result by requiring that the choice of law of the parties to a letter of credit be given effect. Accordingly, parties that wish for a letter of credit to be governed by the Convention may obtain that result by so providing in the letter of credit. Similarly, parties may provide that a letter of credit will be governed by a law of a foreign country, in which event the law of the foreign country will govern the letter of credit, including possibly the Convention as implemented in the foreign country. Likewise, parties that wish for their letters of credit to be governed by Article 5 of a particular U.S. state, for example, New York, may expressly so provide.

When a letter of credit is silent as to its governing law, however, the federal implementing legislation would provide that provisions of the 2012 Official Text of Article 5 (including its choice of law rules) would apply, except as modified by the provisions of the Convention dealing with the expiry of a letter of credit and the issuer's rights of setoff. Under the choice of law rules of the 2012 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. Alternatively, if Article 5's choice of law rules indicate that a law of a foreign country governs, then the substantive law of the foreign country governs. 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.

In sum, the proposed federal implementing legislation would provide the appropriate level of assurance necessary for banks and other issuing institutions that the Convention will be implemented in the United States in a manner that provides parties the benefits of familiar uniform state law enactments on letters of credit. The legislation would not amend any provisions of existing federal law, although it is anticipated that it appropriately may be codified as part of Title 15 of the United States Code ("Banks and Banking").

III. THE CONVENTION AND U.S. LAW

The Convention is less comprehensive than the relatively well-developed law on letters of credit in the United States and some other countries. The Convention also does not contain the level of detail set forth in banking practice rules. Accordingly, in the United States, any transaction subject to the Convention would also be subject to other applicable domestic law, including uniform state enactments of UCC Article 5 and applicable standard banking practice rules that address matters not covered by the Convention.

By way of example, the Convention does not address commonly encountered issues such as the rights of an issuer to be reimbursed or indemnified, or the defenses or claims available to an applicant against an issuer. The Convention is also silent on the nature of the issuer-applicant relationship, thereby leaving these matters to the law applicable to their relationship.

Also, where the Convention applies, in interpreting *Articles 19* and *20* of the

Convention on the extraordinary exceptions to an obligation to honor a presentation by the beneficiary, and on obtaining provisional court measures, courts could consider existing U.S. practice under UCC Article 5-109, which codifies the scope of the fraud exception and the requirements for obtaining a court order enjoining the honoring of a presentation.

**UNITED NATIONS CONVENTION ON INDEPENDENT GUARANTEES
AND STAND-BY LETTERS OF CREDIT**



UNITED NATIONS
1995

United Nations Convention on Independent Guarantees
and Stand-by Letters of Credit

CHAPTER I. SCOPE OF APPLICATION

Article 1

Scope of application

1. This Convention applies to an international undertaking referred to in article 2:

(a) If the place of business of the guarantor/issuer at which the undertaking is issued is in a Contracting State, or

(b) If the rules of private international law lead to the application of the law of a Contracting State,

unless the undertaking excludes the application of the Convention.

2. This Convention applies also to an international letter of credit not falling within article 2 if it expressly states that it is subject to this Convention.

3. The provisions of articles 21 and 22 apply to international undertakings referred to in article 2 independently of paragraph 1 of this article.

Article 2

Undertaking

1. For the purposes of this Convention, an undertaking is an independent commitment, known in international practice as an independent guarantee or as a stand-by letter of credit, given by a bank or other institution or person ("guarantor/issuer") to pay to the beneficiary a certain or determinable amount upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment is due because of a default in the

performance of an obligation, or because of another contingency, or for money borrowed or advanced, or on account of any mature indebtedness undertaken by the principal/applicant or another person.

2. The undertaking may be given:

(a) At the request or on the instruction of the customer ("principal/applicant") of the guarantor/issuer;

(b) On the instruction of another bank, institution or person ("instructing party") that acts at the request of the customer ("principal/applicant") of that instructing party; or

(c) On behalf of the guarantor/issuer itself.

3. Payment may be stipulated in the undertaking to be made in any form, including:

(a) Payment in a specified currency or unit of account;

(b) Acceptance of a bill of exchange (draft);

(c) Payment on a deferred basis;

(d) Supply of a specified item of value.

4. The undertaking may stipulate that the guarantor/issuer itself is the beneficiary when acting in favour of another person.

Article 3

Independence of undertaking

For the purposes of this Convention, an undertaking is independent where the guarantor/issuer's obligation to the beneficiary is not:

(a) Dependent upon the existence or validity of any underlying transaction, or upon any other undertaking (including stand-by letters of credit or independent guarantees to which confirmations or counter-guarantees relate); or

(b) Subject to any term or condition not appearing in the undertaking, or to any future, uncertain act or event except presentation of documents or another such act or event within a guarantor/issuer's sphere of operations.

Article 4

Internationality of undertaking

1. An undertaking is international if the places of business, as specified in the undertaking, of any two of the following persons are in different States: guarantor/issuer, beneficiary, principal/applicant, instructing party, confirmer.

2. For the purposes of the preceding paragraph:

(a) If the undertaking lists more than one place of business for a given person, the relevant place of business is that which has the closest relationship to the undertaking;

(b) If the undertaking does not specify a place of business for a given person but specifies its habitual residence, that residence is relevant for determining the international character of the undertaking.

CHAPTER II. INTERPRETATION

Article 5

Principles of interpretation

In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit.

Article 6Definitions

For the purposes of this Convention and unless otherwise indicated in a provision of this Convention or required by the context:

(a) "Undertaking" includes "counter-guarantee" and "confirmation of an undertaking";

(b) "Guarantor/issuer" includes "counter-guarantor" and "confirmer";

(c) "Counter-guarantee" means an undertaking given to the guarantor/issuer of another undertaking by its instructing party and providing for payment upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment under that other undertaking has been demanded from, or made by, the person issuing that other undertaking;

(d) "Counter-guarantor" means the person issuing a counter-guarantee;

(e) "Confirmation" of an undertaking means an undertaking added to that of the guarantor/issuer, and authorized by the guarantor/issuer, providing the beneficiary with the option of demanding payment from the confirmer instead of from the guarantor/issuer, upon simple demand or upon demand accompanied by other documents, in conformity with the terms and any documentary conditions of the confirmed undertaking, without prejudice to the beneficiary's right to demand payment from the guarantor/issuer;

(f) "Confirmer" means the person adding a confirmation to an undertaking;

(g) "Document" means a communication made in a form that provides a complete record thereof.

CHAPTER III. FORM AND CONTENT OF UNDERTAKING

Article 7Issuance, form and irrevocability of undertaking

1. Issuance of an undertaking occurs when and where the undertaking leaves the sphere of control of the guarantor/issuer concerned.
2. An undertaking may be issued in any form which preserves a complete record of the text of the undertaking and provides authentication of its source by generally accepted means or by a procedure agreed upon by the guarantor/issuer and the beneficiary.
3. From the time of issuance of an undertaking, a demand for payment may be made in accordance with the terms and conditions of the undertaking, unless the undertaking stipulates a different time.
4. An undertaking is irrevocable upon issuance, unless it stipulates that it is revocable.

Article 8Amendment

1. An undertaking may not be amended except in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph 2 of article 7.
2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, an undertaking is amended upon issuance of the amendment if the amendment has previously been authorized by the beneficiary.
3. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, where any amendment has not previously been authorized by the beneficiary, the undertaking is amended only when the guarantor/issuer receives a notice of acceptance of the amendment by the beneficiary in a form referred to in paragraph 2 of article 7.

4. An amendment of an undertaking has no effect on the rights and obligations of the principal/applicant (or an instructing party) or of a confirmer of the undertaking unless such person consents to the amendment.

Article 9

Transfer of beneficiary's right to demand payment

1. The beneficiary's right to demand payment may be transferred only if authorized in the undertaking, and only to the extent and in the manner authorized in the undertaking.
2. If an undertaking is designated as transferable without specifying whether or not the consent of the guarantor/issuer or another authorized person is required for the actual transfer, neither the guarantor/issuer nor any other authorized person is obliged to effect the transfer except to the extent and in the manner expressly consented to by it.

Article 10

Assignment of records

1. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the beneficiary may assign to another person any proceeds to which it may be, or may become, entitled under the undertaking.
2. If the guarantor/issuer or another person obliged to effect payment has received a notice originating from the beneficiary, in a form referred to in paragraph 2 of article 7, of the beneficiary's irrevocable assignment, payment to the assignee discharges the obligor, to the extent of its payment, from its liability under the undertaking.

Article 11Cessation of right to demand payment

1. The right of the beneficiary to demand payment under the undertaking ceases when:

(a) The guarantor/issuer has received a statement by the beneficiary of release from liability in a form referred to in paragraph 2 of article 7;

(b) The beneficiary and the guarantor/issuer have agreed on the termination of the undertaking in the form stipulated in the undertaking or, failing such stipulation, in a form referred to in paragraph 2 of article 7;

(c) The amount available under the undertaking has been paid, unless the undertaking provides for the automatic renewal or for an automatic increase of the amount available or otherwise provides for continuation of the undertaking;

(d) The validity period of the undertaking expires in accordance with the provisions of article 12.

2. The undertaking may stipulate, or the guarantor/issuer and the beneficiary may agree elsewhere, that return of the document embodying the undertaking to the guarantor/issuer, or a procedure functionally equivalent to the return of the document in the case of the issuance of the undertaking in non-paper form, is required for the cessation of the right to demand payment, either alone or in conjunction with one of the events referred to in subparagraphs (a) and (b) of paragraph 1 of this article. However, in no case shall retention of any such document by the beneficiary after the right to demand payment ceases in accordance with subparagraph (c) or (d) of paragraph 1 of this article preserve any rights of the beneficiary under the undertaking.

Article 12

Expiry

The validity period of the undertaking expires:

(a) At the expiry date, which may be a specified calendar date or the last day of a fixed period of time stipulated in the undertaking, provided that, if the expiry date is not a business day at the place of business of the guarantor/issuer at which the undertaking is issued, or of another person or at another place stipulated in the undertaking for presentation of the demand for payment, expiry occurs on the first business day which follows;

(b) If expiry depends according to the undertaking on the occurrence of an act or event not within the guarantor/issuer's sphere of operations, when the guarantor/issuer is advised that the act or event has occurred by presentation of the document specified for that purpose in the undertaking or, if no such document is specified, of a certification by the beneficiary of the occurrence of the act or event;

(c) If the undertaking does not state an expiry date, or if the act or event on which expiry is stated to depend has not yet been established by presentation of the required document and an expiry date has not been stated in addition, when six years have elapsed from the date of issuance of the undertaking.

CHAPTER IV. RIGHTS, OBLIGATIONS AND DEFENCES

Article 13

Determination of rights and obligations

1. The rights and obligations of the guarantor/issuer and the beneficiary arising from the undertaking are determined by the terms and conditions set forth in the undertaking, including any rules, general conditions or usages specifically referred to therein, and by the provisions of this Convention.

2. In interpreting terms and conditions of the undertaking and in settling questions that are not addressed by the terms and conditions of

the undertaking or by the provisions of this Convention, regard shall be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice.

Article 14

Standard of conduct and liability of guarantor/issuer

1. In discharging its obligations under the undertaking and this Convention, the guarantor/issuer shall act in good faith and exercise reasonable care having due regard to generally accepted standards of international practice of independent guarantees or stand-by letters of credit.
2. A guarantor/issuer may not be exempted from liability for its failure to act in good faith or for any grossly negligent conduct.

Article 15

Demand

1. Any demand for payment under the undertaking shall be made in a form referred to in paragraph 2 of article 7 and in conformity with the terms and conditions of the undertaking.
2. Unless otherwise stipulated in the undertaking, the demand and any certification or other document required by the undertaking shall be presented, within the time that a demand for payment may be made, to the guarantor/issuer at the place where the undertaking was issued.
3. The beneficiary, when demanding payment, is deemed to certify that the demand is not in bad faith and that none of the elements referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 are present.

Article 16

Examination of demand and accompanying documents

1. The guarantor/issuer shall examine the demand and any accompanying documents in accordance with the standard of conduct referred to in paragraph 1 of article 14. In determining whether documents are in facial conformity with the terms and conditions of the undertaking, and are consistent with one another, the guarantor/issuer shall have due regard to the applicable international standard of independent guarantee or stand-by letter of credit.

2. Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer shall have reasonable time, but not more than seven business days following the day of receipt of the demand and any accompanying documents, in which to:

(a) Examine the demand and any accompanying documents;

(b) Decide whether or not to pay;

(c) If the decision is not to pay, issue notice thereof to the beneficiary.

The notice referred to in subparagraph (c) above shall, unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, be made by teletransmission or, if that is not possible, by other expeditious means and indicate the reason for the decision not to pay.

Article 17

Payment

1. Subject to article 19, the guarantor/issuer shall pay against a demand made in accordance with the provisions of article 15. Following a determination that a demand for payment so conforms, payment shall be made promptly, unless the undertaking stipulates payment on a deferred basis, in which case payment shall be made at the stipulated time.

2. Any payment against a demand that is not in accordance with the provisions of article 15 does not prejudice the rights of the principal/applicant.

Article 18

Set-off

Unless otherwise stipulated in the undertaking or elsewhere agreed by the guarantor/issuer and the beneficiary, the guarantor/issuer may discharge the payment obligation under the undertaking by availing itself of a right of set-off, except with any claim assigned to it by the principal/applicant or the instructing party.

Article 19

Exception to payment obligation

1. If it is manifest and clear that:

(a) Any document is not genuine or has been falsified;

(b) No payment is due on the basis asserted in the demand and the supporting documents; or

(c) Judging by the type and purpose of the undertaking, the demand has no conceivable basis,

the guarantor/issuer, acting in good faith, has a right, as against the beneficiary, to withhold payment.

2. For the purposes of subparagraph (c) of paragraph 1 of this article, the following are types of situations in which a demand has no conceivable basis:

(a) The contingency or risk against which the undertaking was designed to secure the beneficiary has undoubtedly not materialized;

(b) The underlying obligation of the principal/applicant has been declared invalid by a court or arbitral tribunal, unless the undertaking

indicates that such contingency falls within the risk to be covered by the undertaking;

(c) The underlying obligation has undoubtedly been fulfilled to the satisfaction of the beneficiary;

(d) Fulfilment of the underlying obligation has clearly been prevented by wilful misconduct of the beneficiary;

(e) In the case of a demand under a counter-guarantee, the beneficiary of the counter-guarantee has made payment in bad faith as guarantor/issuer of the undertaking to which the counter-guarantee relates.

3. In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph 1 of this article, the principal/applicant is entitled to provisional court measures in accordance with article 20.

CHAPTER V. PROVISIONAL COURT MEASURES

Article 20

Provisional court measures

1. Where, on an application by the principal/applicant or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the circumstances referred in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 is present, the court, on the basis of immediately available strong evidence, may:

(a) Issue a provisional order to the effect that the beneficiary does not receive payment, including an order that the guarantor/issuer hold the amount of the undertaking, or

(b) Issue a provisional order to the effect that the proceeds of the undertaking paid to the beneficiary are blocked; taking into account whether in the absence of such an order the principal/applicant would be likely to suffer serious harm.

2. The court, when issuing a provisional order referred to in paragraph 1 of this article, may require the person applying therefor to furnish such form of security as the court deems appropriate.

3. The court may not issue a provisional order of the kind referred to in paragraph 1 of this article based on any objection to payment other than those referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19, or use of the undertaking for a criminal purpose.

CHAPTER VI. CONFLICT OF LAWS

Article 21

Choice of applicable law

The undertaking is governed by the law the choice of which is:

(a) Stipulated in the undertaking or demonstrated by the terms and conditions of the undertaking; or

(b) Agreed elsewhere by the guarantor/issuer and the beneficiary.

Article 22

Determination of applicable law

Failing a choice of law in accordance with article 21, the undertaking is governed by the law of the State where the guarantor/issuer has that place of business at which the undertaking was issued.

CHAPTER VII. FINAL CLAUSES

Article 23

Depositary

The Secretary-General of the United Nations is the depositary of this Convention.

Article 24

Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until 11 December 1997.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. This Convention is open to accession by all States which are not signatory States as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 25

Application to territorial units

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only one or more of them, and may at any time substitute another declaration for its earlier declaration.
2. These declarations are to state expressly the territorial units to which the Convention extends.
3. If, by virtue of a declaration under this article, this Convention does not extend to all territorial units of a State and the place of business of the guarantor/issuer or of the beneficiary is located in a territorial unit to which the Convention does not extend, this place of business is considered not to be in a Contracting State.
4. If a State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 26

Effect of declaration

1. Declarations made under article 25 at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.
3. A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary.
4. Any State which makes a declaration under article 25 may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal takes effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

Article 27

Reservations

No reservations may be made to this Convention.

Article 28

Entry into force

1. This Convention enters into force on the first day of the month following the expiration of one year from the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession.
2. For each State which becomes a Contracting State to this Convention after the date of the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention enters

into force on the first day of the month following the expiration of one year after the date of the deposit of the appropriate instrument on behalf of that State.

3. This Convention applies only to undertakings issued on or after the date when the Convention enters into force in respect of the Contracting State referred to in subparagraph (a) or the Contracting State referred to in subparagraph (b) of paragraph 1 of article 1.

Article 29

Denunciation

1. A Contracting State may denounce this Convention at any time by means of a notification in writing addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expiration of one year after the notification is received by the depositary. Where a longer period is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at New York, this eleventh day of December one thousand nine hundred and ninety-five, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed the present Convention.

UNITED NATIONS
UNITED NATIONS CONVENTION ON
INDEPENDENT GUARANTEES AND STAND-BY
LETTERS OF CREDIT
ADOPTED BY THE GENERAL ASSEMBLY OF
THE UNITED NATIONS ON 11 DECEMBER
1995



NATIONS UNIES
CONVENTION DES NATIONS UNIES
SUR LES GARANTIES INDEPENDANTES
ET LES LETTRES DE CREDIT STAND-BY
ADOPTÉE PAR L'ASSEMBLÉE GÉNÉRALE
DES NATIONS UNIES LE 11 DÉCEMBRE
1995

PROCES-VERBAL OF RECTIFICATION
OF THE ORIGINAL
OF THE CONVENTION

THE SECRETARY-GENERAL OF THE
UNITED NATIONS, acting in his
capacity as depositary of the United
Nations Convention on Independent
Guarantees and Stand-by Letters of
Credit, adopted by the General
Assembly of the United Nations on
11 December 1995,

WHEREAS it appears that the
original of the Convention (Arabic,
Chinese, English, French, Russian
and Spanish texts) contains errors,

WHEREAS the corresponding proposed
corrections have been communicated
to all interested States by
depositary notification
C.N.154.1997.TREATIES-1 of 22 April
1997,

WHEREAS at the end of a period of
90 days from the date of that
communication, no objection had been
notified,

HAS CAUSED the corrections
indicated in the annex to this
Procès-verbal to be effected in the
original of the Convention (Arabic,
Chinese, English, French, Russian
and Spanish texts), which
corrections also apply to the
certified true copies of the
Convention established on
6 March 1996.

IN WITNESS WHEREOF, I,
Paul Szasz, Acting Director and
Deputy to the Under-Secretary-
General in charge of the Office of
Legal Affairs, have signed this
Procès-verbal.

Done at the Headquarters of the
United Nations, New York, on
21 July 1997.

PROCES-VERBAL DE RECTIFICATION
DE L'ORIGINAL DE LA CONVENTION

LE SECRÉTAIRE GÉNÉRAL DE
L'ORGANISATION DES NATIONS UNIES,
agissant en sa qualité de
dépositaire de la Convention des
Nations Unies sur les garanties
indépendantes et les lettres de
crédit stand-by, adoptée par
l'Assemblée générale des Nations
Unies le 11 décembre 1995,

CONSIDÉRANT que l'original de la
Convention (textes anglais, arabe,
chinois, espagnol, français et russe
comporte des erreurs,

CONSIDÉRANT que la proposition de
corrections correspondantes a été
communiquée à tous les États
intéressés par la notification
dépositaire C.N.154.1997.TREATIES-1
du 22 avril 1997,

CONSIDÉRANT que dans le délai de
90 jours à compter de la date de
cette communication, aucune
objection n'a été notifiée,

A FAIT PROCÉDER dans l'original
de ladite Convention (textes
anglais, arabe, chinois, espagnol,
français et russe) aux corrections
requises, telles qu'indiquées en
annexe au présent procès-verbal,
lesquelles s'appliquent également
aux exemplaires certifiés conformes
de la Convention établis le
6 mars 1996.

EN FOI DE QUOI, Nous,
Le Directeur par intérim chargé du
Bureau des affaires juridiques,
avons signé le présent procès-
verbal.

Fait au Siège de l'Organisation
des Nations Unies, à New York, le
21 juillet 1997.

Paul Szasz

Corrections to the English text

1. Article 10 (heading) should read as follows:

"Assignment of proceeds"

2. Article 16, paragraph 1, second sentence should read as follows:

"... In determining whether documents are in facial conformity with the terms and conditions of the undertaking, and are consistent with one another, the guarantor/issuer shall have due regard to the applicable international standard of independent guarantee or stand-by letter of credit practice."

3. Article 20, paragraph 1, first sentence should read as follows:

"1. Where, on an application by the principal/applicant or the instructing party, it is shown that there is a high probability that, with regard to a demand made, or expected to be made, by the beneficiary, one of the circumstances referred to in subparagraphs (a), (b) and (c) of paragraph 1 of article 19 is present, the court, on the basis of immediately available strong evidence, may:"

4. Article 20, paragraph 1 (b) should ^{read as} follow:

"(b) Issue a provisional order to the effect that the proceeds of the undertaking paid to the beneficiary are blocked,

taking into account whether in the absence of such an order the principal/applicant would be likely to suffer serious harm."