

# *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 2009.”

## **Section 2. Findings and Purpose.**

### **(a) Findings**

- (1) Commercial finance assurances such as letters of credit, standby letters of credit, and bank and financial institution 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 (“Convention”) achieves these objectives;
- (4) Because the independence principles embodied in the Convention are already embodied in the Uniform Commercial Code (“UCC”), implementation of the Convention introduces only minor changes to uniform state law in the United States. Article 5 of the UCC, entitled “Letters of Credit,” codifies the law of independent guarantees as well as the law of standby and commercial letters of credit.
- (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.

### **(b) Purpose.**

The purpose of this Act is to implement the Convention in the United States. This Act does that by giving full 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 Letters of Credit.
- (b) “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.

**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 do not Choose Applicable Law.** An undertaking that does not expressly state its governing law is governed by the law, including conflict of laws rules, as stated in the 2009 Official Text of Article 5 of the UCC. Except as otherwise stated in Section 5(a) and Sections 7 and 8, that Text of Article 5 of the UCC is the law that implements the Convention in the United States.

**Section 6. Undertakings that Choose Local Law as the Applicable Law.** An undertaking that expressly states that it is governed by the law of a State of the United States shall be governed by the law of that State and not by the Convention.

**Section 7. No Stated Expiration Date.** If an undertaking covered by Section 5 has no stated expiration date or other provision that determines its duration, its duration is governed by Article 12(c) of the Convention and not by Section 5-106 of the UCC.

**Section 8. Set-off.** An issuer of an undertaking covered by Section 5 may discharge its obligation to pay a beneficiary in accordance with Article 18 of the Convention.

**Section 9. 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 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.