

Implementing U.S. Federal Legislation for
The United Nations Convention on Independent Guaranties and Standby Letters of Credit

1) Except as otherwise provided in paragraphs numbered 2 and 3 below, the Senate of the United States finds that the United Nations Convention On Independent Guarantees and Standby Letters of Credit has been implemented in and for the United States by the adoption of Article 5 of the Uniform Commercial Code in the various states and territories, and the Senate concludes that acts in compliance with Article 5 constitute compliance with the Convention.

2) For undertakings that fall within Articles 1 through 4 of the Convention, Article 12(c) (on expiration of an undertaking) and Article 18 (on set-off) preempt Article 5 of the Uniform Commercial Code and other law of a state or territory of the United States but only to the extent that application of Article 5 of the Uniform Commercial Code or other law of the state or territory would produce a result that would be inconsistent with Article 12(c) or 18.

3) For any case concerning an undertaking that falls within Articles 1 through 4 of the Convention in which the applicable law of the state or territory is not the uniform version of Article 5 of the Uniform Commercial Code, that law is preempted by the uniform version of Article 5 of the Uniform Commercial Code but only to the extent that application of that law would produce a result that would be inconsistent with the Convention.

4) References to the Uniform Commercial Code are to the Official Text of the Uniform Commercial Code as promulgated from time to time by the American Law Institute and the Uniform Law Commission.

5) This [Act] shall become effective on the date on which the Convention enters into force for the United States.

6) 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].

7) A transaction arising out of or associated with an undertaking that was issued before the effective date of this [Act] and the rights, obligations, and interests flowing from that transaction are governed by the law of any state or territory preempted by this [Act] as if preemption had not occurred and may be terminated, completed, consummated, or enforced under that other law.

Proposed Amendment to Article 5 of the Uniform Commercial Code
To Conform Article 5 to Articles 12(c) and 18 of
The United Nations Convention on Independent Guarantees and Standby Letters of
Credit

5-119. Letters of Credit Under the United Nations Convention on Independent Guarantees and Standby Letters of Credit

(a) [**Only Letters of Credit covered by the Convention**] This Section applies only to letters of credit that are brought within the United Nations Convention on Independent Guarantees and Standby Letters of Credit by Articles 1 through 4 of the Convention.

(b) [**No Stated Expiration Date**] If there is no stated expiration date or other provision that determines its duration, a letter of credit expires 6 years after the date on which it was issued.

(c) [**Set-off**] Except as otherwise provided in this subsection, an issuer may discharge its obligation to pay an issuer by set-off. An issuer may not set-off a claim that has been assigned to it by the applicant, and it may not set-off when it has agreed not to do so.

(d) [**Inferences for letters not covered by the Convention**] A court may not draw any inference about the appropriate rules for set-off for letters of credit not covered by the Convention from the rules stated in this Section.

Transition Provisions for new UCC § 5-119

x) 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].

y) A transaction arising out of or associated with an undertaking that was issued before the effective date of this [Act] and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended by this [Act] as if the amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law.