



General Assembly

Distr.
GENERAL

A/CN.9/431
4 July 1996

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW

Thirtieth session

Vienna, 12-30 May 1997

Explanatory note by the UNCITRAL Secretariat on the
United Nations Convention on Independent Guarantees and Stand-by Letters of Credit¹

INTRODUCTION

1. The United Nations Convention on Independent Guarantees and Stand-by Letters of Credit was adopted by the United Nations General Assembly and opened for signature by States on 11 December 1995. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL).²

2. UNCITRAL is an inter-governmental technical organ of the United Nations General Assembly that prepares international commercial law instruments designed to assist the international community in modernizing and harmonizing laws dealing with international trade. Other UNCITRAL legal instruments include, for example, the United Nations Convention on Contracts for the International Sale of Goods, United Nations Convention on the Limitation Period in the International Sale of Goods, United Nations Convention on the Carriage of Goods by Sea, 1978, United Nations Convention on the Liability of Operators of Transport Terminals in International

¹ This note has been prepared by the Secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention.

² The draft Convention was prepared by the UNCITRAL Working Group on International Contract Practices at its thirteenth to twenty-third sessions (for the reports of those sessions, see United Nations documents A/CN.9/330, 342, 345, 358, 361, 372, 374, 388, 391, 405 and 408; reproduced in UNCITRAL Yearbooks vol. XXI: 1990 to XXVI:1995). The deliberations of the Commission on the draft Convention are reflected in paragraphs 11 to 201 of the report of the United Nations Commission on International Trade Law on the work of its twenty-eighth session (1995), Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17), which contains in its Annex I the draft Convention as submitted by the Commission to the General Assembly. The General Assembly adopted the Convention at the Fiftieth Session by its resolution 50/48.

Trade, UNCITRAL Arbitration Rules, UNCITRAL Notes on Organizing Arbitral Proceedings, UNCITRAL Conciliation Rules, UNCITRAL Model Law on International Commercial Arbitration, United Nations Convention on International Bills of Exchange and International Promissory Notes, UNCITRAL Model Law on International Credit Transfers, UNCITRAL Model Law on Procurement of Goods, Construction and Services, and UNCITRAL Model Law on Electronic Commerce.

3. The Convention on Independent Guarantees and Stand-by Letters of Credit is designed to facilitate the use of independent guarantees and stand-by letters of credit, in particular where only one or the other of those instruments may be traditionally in use. The Convention also solidifies recognition of common basic principles and characteristics shared by the independent guarantee and the stand-by letter of credit. In order to emphasize the common umbrella of rules provided for both independent guarantees and stand-by letters of credit, and to overcome divergences that may exist in terminology, the Convention uses the neutral term "undertaking" to refer to both types of instruments.

4. Independent undertakings covered by the Convention are basic tools of international commerce. They are used in a variety of situations, for example: to secure performance of contractual obligations including construction, supply and commercial payment obligations; to secure repayment of an advance payment in the event that such repayment is required; to secure a winning bidder's obligation to enter into a procurement contract; to ensure reimbursement of payment under another undertaking; to support issuance of commercial letters of credit and insurance coverage; and to enhance creditworthiness of public and private borrowers. Yet familiarity with one or the other instrument covered by the Convention is not universal, there is a wide absence of legislative provisions dealing with them, practices concerning the two types of instruments have differed in certain respects, and important questions confronting users, practitioners and courts in the daily life of these instruments are beyond the power of the parties to settle contractually.

5. By establishing a harmonized set of rules for the two types of instruments covered, the Convention will provide greater legal certainty in their use for day-to-day commercial transactions, as well as marshall credit for public borrowers. The Convention will also facilitate issuance of independent guarantees and stand-by letters of credit in combination with each other, for example, the issuance of a stand-by letter of credit to support the issuance of a guarantee, or the reverse case, with both undertakings capable of being subject to the same legal regime. The Convention will also facilitate "syndications", which could, with the help of the Convention, more easily combine both types of instruments. That technique allows lenders to spread credit risk among the participants in the syndication, thereby enabling them to extend larger volumes of credit.

6. The Convention gives legislative support to the autonomy of the parties to apply agreed rules of practice such as the Uniform Customs and Practice for Documentary Credits (UCP), formulated by the International Chamber of Commerce (ICC), or other rules that may evolve to deal specifically with stand-by letters of credit, and the Uniform Rules for Demand Guarantees (URDG, also formulated by ICC). In addition to being essentially consistent with the solutions found in rules of practice, the Convention supplements their operation by dealing with issues beyond the scope of such rules. It does so in particular regarding the question of fraudulent or abusive demands for payment and judicial remedies in such instances. Furthermore, the deference of the Convention to the specific terms of independent guarantees and stand-by letters of credit, including any rules of practice incorporated therein, enables the Convention to work in tandem with rules of practice such as UCP and URDG.

7. It should be noted that, strictly speaking, an independent guarantee or stand-by letter of credit is an undertaking given to a beneficiary. Accordingly, the focus of the Convention is on the relationship between the guarantor (in the case of an independent guarantee) or the issuer (in the case of a stand-by letter of credit) (hereinafter referred to as "guarantor/issuer") and the beneficiary. The relationship between the guarantor/issuer and its customer (the principal, in the case of an independent guarantee, or the applicant, in the case of a stand-by letter of credit, hereinafter referred to as "principal/applicant") largely falls outside the scope of the Convention. The same may be said of the relationship between a guarantor/issuer and its instructing party (the instructing party being, for example, a bank, requesting, on behalf of its customer, the guarantor/issuer to issue an independent guarantee).

8. Provided below is a summary of the main features and provisions of the Convention.

I. SCOPE OF APPLICATION

A. Types of instruments covered

9. The scope of application of the Convention is confined to instruments of the type understood in practice as independent guarantees (referred to as, e.g., "demand", "first demand", "simple demand" or "bank" guarantees) or stand-by letters of credit (article 2(1)). Those instruments can be covered by the umbrella of the Convention because they share a wide area of common use. Both types of instruments, which are payable upon presentation of any stipulated documents, are used to secure against the possibility that some contingency may occur (e.g., a breach of a contract). It may be noted that another major use in particular of stand-by letters of credit is as an instrument to effectuate payment of mature indebtedness ("financial" or "direct pay" stand-by letters of credit).

10. In the undertakings covered by the Convention the guarantor/issuer promises to pay the beneficiary upon a demand for payment. The demand may, depending upon the terms of the undertaking, be either a "simple" demand or one having to be accompanied by the other documents called for in the guarantee or stand-by letter of credit. The guarantor/issuer's obligation to pay is triggered by the presentation of a demand for payment in the form, and with any supporting documents, as may be required by the independent guarantee or stand-by letter of credit. 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. Because of this characteristic the instruments covered by the Convention are referred to commonly as being "independent" and "documentary" in nature.

11. Reflecting practice, various types of scenarios are envisaged in which an undertaking may be given, including at the request of the customer ("principal/applicant"), on the instruction of another entity or person ("instructing party") acting at the request of the customer of the instructing party, or on behalf of the guarantor/issuer itself (article 2(2)).

12. Full freedom is given to the parties to exclude completely the coverage of the Convention (article 1), with the result that another law becomes applicable. Since the Convention, if it is applicable, is to a large extent suppletive rather than mandatory, wide breadth is given to exclude or alter the rules of the Convention in any given case.

B. Coverage of counter-guarantees and confirmations

13. The Convention is designed to include coverage of the "counter-guarantee". A counter-guarantee is defined in the Convention (article 6(c)) in the same essential terms as the basic notion of "undertaking", namely, as 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 (counter-guarantee).

14. Apart from this general treatment of counter-guarantees as "undertakings", the Convention provides a specific provision on counter-guarantees in the context of fraudulent or abusive demands for payment; in that context counter-guarantees may raise questions distinct from those raised by other undertakings covered by the Convention (see below, para. 48).

15. The Convention also includes in its scope confirmations of undertakings, i.e., an undertaking added to that of, and authorized by, the guarantor/issuer. A confirmation gives the beneficiary an option of demanding payment from the confirmer as an alternative to demanding payment from the guarantor/issuer. By requiring authorization of the guarantor/issuer, the Convention does not recognize as confirmations "silent" confirmations, i.e., confirmations added without the assent of the guarantor/issuer.

C. Instruments outside scope of Convention

16. The Convention does not apply to "accessory" or "conditional" guarantees, i.e., guarantees in which the payment obligation of the guarantor involves more than the mere examination of a documentary demand for payment. Thus, the Convention does not annul or affect such other instruments in any way, nor does it regulate or discourage their use in any way. Whether it would be preferable to use in any given case an independent undertaking of the type covered by the Convention, or another type of instrument, would depend on the commercial circumstances at play, and the particular interests of the parties involved.

17. Letters of credit other than stand-by letters of credit are not covered by the Convention. However, the Convention does recognize a right of parties to international letters of credit other than stand-by letters of credit to "opt into" the Convention (article 1(2)). That provision has been included in particular because the Convention provides a set of rules that parties to commercial letters of credit may wish in their own judgment to take advantage of, in view of the broad common ground between commercial and stand-by letters of credit, and in view of the occasional difficulties in determining whether a letter of credit is of a stand-by or commercial variety.

D. Definition of "independence"

18. While it is widely recognized that undertakings of the type covered by the Convention are "independent", there has been a lack of uniformity internationally in the understanding and recognition of that essential characteristic. The Convention will promote such uniformity by providing a definition of "independence" (article 3). That definition is phrased in terms of the undertaking not being dependent upon the existence or validity of the underlying transaction, or upon any other undertaking. The latter reference, to other undertakings, clarifies the independent nature of a counter-guarantee from the guarantee that it relates to, and of a confirmation from the stand-by letter of credit or independent guarantee that it confirms.

19. In addition, to fall within the scope of the Convention, an undertaking must not be subject to any terms or conditions not appearing in the undertaking. It is specified that, to fall within the Convention, an undertaking should not be subject to any future, uncertain act or event, with the exception of presentation of a demand and other documents by the beneficiary or of any other such act or event that falls within the "sphere of operations" of the guarantor/issuer. That is in line with the notion that the role of the guarantor/issuer in the case of independent undertakings is one of paymaster rather than investigator.

E. "Documentary" character of undertakings covered

20. As an adjunct to being "independent" from the underlying transaction, the undertakings covered by the Convention possess a "documentary" character. This means that the duties of the guarantor/issuer when faced with a demand for payment are limited to examining the demand for payment and any supporting documents to ascertain whether the demand and other documents submitted conform "facially" with what is called for under the terms of the independent guarantee or stand-by letter of credit. The effect of this rule is that undertakings possessing "non-documentary conditions" are outside the scope of the Convention. The only conditions which would not have to be documentary in nature would relate to acts or events within the sphere of operations of the guarantor/issuer. A simple example of the latter would be a determination by the guarantor/issuer as to whether a required monetary deposit had been made in a designated account maintained with that guarantor/issuer.

F. Definition of internationality

21. The Convention limits its application to undertakings that are international. Internationality is determined on the basis of the places of business, as specified in the undertaking, of any two of the following being in different States: guarantor/issuer, beneficiary, principal/applicant, instructing party, confirmer (article 4(1)). Special rules are provided for the case of an undertaking listing more than one place of business for a party, as well as for the case of a party not having a "place of business" as such, but only a habitual residence (article 4(2)).

G. Connecting factors for application of the Convention

22. The Convention applies to international undertakings in either one of two ways. The first way is linked to the location of the guarantor/issuer in a State party to the Convention ("Contracting State") (article 1(1)(a)). The second way in which the Convention applies is if the rules of private international law lead to the application of the law of a Contracting State (article 1(1)(b)).

23. The Convention provides an additional layer of harmonization of law in this field, in that its chapter VI (Conflict of laws, articles 21 and 22) supplies the rules to be followed by courts of Contracting States in identifying in any given case the law applicable to an independent guarantee or a stand-by letter of credit. Those rules apply whether or not in a particular case it turns out that the Convention is the applicable substantive law for the independent guarantee or stand-by letter of credit in question (see below, paras. 53 and 54).

II. INTERPRETATION

24. The Convention contains a general rule that interpretation of the Convention should be with a view to its international character and the need to promote uniformity in its application (article 5). In addition, interpretation is to have regard for the observance of good faith in international practice. Abstracts of any court decisions or arbitral awards applying and interpreting a provision of the Convention will be included in the case collection system called "CLOUT" (Case law on UNCITRAL texts).

III. FORM AND CONTENT OF UNDERTAKING

25. The Convention provides rules on several aspects of the form and content of undertakings, as summarized below.

A. Issuance

26. On the question of the point of time and place of issuance (i.e., when and where the obligations of the guarantor/issuer to the beneficiary become operative), the Convention promotes certainty in an area traditionally of some uncertainty due to the existence of differing notions. The Convention rule is that issuance occurs when and where the undertaking leaves the sphere of control of the guarantor/issuer (e.g., when it is sent to the beneficiary)(article 7(1)). In addition, the Convention defines issuance in terms of its practical effect. Once issued, the undertaking is available for payment in accordance with its terms and is irrevocable.

27. As is customary in legal texts of UNCITRAL, the Convention establishes a flexible and forward looking form requirement for issuance. By requiring a form that preserves a complete record of the text of the undertaking, rather than referring to "written" form, the Convention accommodates issuance in a non-paper-based medium (e.g., by means of electronic data interchange). It does so by referring to issuance in any form that preserves a complete record of the text of the undertaking and provides a generally acceptable or specifically agreed means of authentication (article 7(2)).

28. The Convention does not deal with the question of capacity to issue undertakings (i.e., who is permitted to be a guarantor/issuer). That question, which raises regulatory or other legal implications that differ from country to country, is left to national law.

B. Amendment

29. Legislative recognition is given by the Convention to the rule of practice that amendment of an undertaking requires acceptance by the beneficiary in order to take effect, unless it is otherwise stipulated (article 8(3)). The Convention takes cognizance of the possibility that an amendment might be authorized in advance by the beneficiary. In such cases, the amendment takes effect upon issuance (article 8(2)).

30. In one of the few provisions of the Convention that directly addresses the relationship between the principal/applicant and the guarantor/issuer, it is made clear that an amendment has no effect on the rights and obligations of the principal/applicant, or for that matter of an instructing party or of a confirmer, unless such other person consents to the amendment (article 8(4)).

C. Transfer and assignment

31. The Convention reflects the distinction drawn in practice between, on the one hand, transfer to another person of the original beneficiary's right to demand payment, and, on the other hand, assignment of the proceeds of the undertaking, if payment is made. In the case of assignment of proceeds, as contrasted with transfer, the right to demand payment remains with the original beneficiary, the assignee being given only the right to receive the proceeds of payment, if such payment occurs.

32. Regarding transfer, the Convention endorses the dual requirement, found in UCP, that the undertaking itself must state that it is transferable, and that, in addition, any actual transfer must be consented to by the guarantor/issuer (article 9). The rationale is that a change in the person who is to present the demand for payment and any accompanying documents may increase the risk assumed by the guarantor/issuer (e.g., if the guarantor/issuer would feel that the proposed transferee was less reliable or familiar than the originally designated beneficiary). For that reason guarantor/issuers are given the opportunity to consent to any given transfer.

33. Regarding assignment of proceeds, the beneficiary of the undertaking may, unless otherwise stipulated in the undertaking or elsewhere agreed, assign the proceeds (article 10(1)). If the beneficiary assigns the proceeds and if the guarantor/issuer or another person obliged to effect payment has received a notice originating from the beneficiary, payment to the assignee discharges the obligor, to the extent of its payment, from liability under the undertaking.(article 10(2)).

D. Cessation of right to demand payment

34. The Convention gives legislative effect to notions of cessation of the right to demand payment that are widely followed in practice, though not yet universally recognized in national laws or judicial precedents. Under the Convention (article 11), the events that trigger cessation include: a statement by the beneficiary releasing the guarantor/issuer; a termination of the undertaking agreed by the guarantor/issuer; full payment of the amount stipulated in the undertaking, unless the undertaking provided for automatic renewal or increase of the amount available; expiry of the validity period of the undertaking. By affirming that the presentation of the demand for payment has to occur prior to the expiry of the undertaking, the Convention will help to overcome any remaining uncertainty as to that question.

35. A degree of uncertainty still surrounds, in some jurisdictions, the question of the effect of retention of the instrument embodying the undertaking as regards definitive cessation of the right to demand payment. The Convention, in line with what is regarded widely as the best practice, provides that in no case does retention of the instrument prolong the right to demand payment if the amount available has already been paid or if the undertaking has expired (article 11(2)). Apart from those two contexts, the parties remain free to stipulate a requirement of return of the undertaking in order to terminate the right to demand payment.

E. Expiry

36. The Convention provides (article 12) that the validity period of an undertaking expires in the following ways: at the expiry date, which may be a fixed date or the last day of a fixed period stipulated in the undertaking; if expiry is linked to 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 after six years from issuance, if no expiry date has been stipulated or if a stipulated expiry act or event has not occurred.

IV. RIGHTS, OBLIGATIONS AND DEFENCES

A. Determination of rights and obligations

37. The rights and obligations of the guarantor/issuer and the beneficiary are determined by the terms and conditions of the undertaking (article 13(1)). Express reference is made in the Convention to rules of practice, general conditions or usages (e.g., UCP, URDG) to which the undertaking is specifically made subject. This is in line with a main purpose of the Convention, to give legislative support to the right of commercial parties to incorporate such rules of practice, conditions or usages. That approach ensures that the Convention will remain a living instrument, sensitive to developments in practice, including future revisions of rules of practice such as UCP and URDG and the development of other international rules of practice.

38. The flexible linking of the Convention to the needs and evolving usages and standards of commercial practice is also referred to elsewhere in the Convention. For example, in the interpretation of the terms and conditions of an undertaking and in settling questions not addressed by the Convention, regard is to be had to generally accepted international rules and usages of independent guarantee or stand-by letter of credit practice (article 13(2)).

39. Similarly, the standard of conduct of the guarantor/issuer, based on good faith and the exercise of reasonable care, is to be defined by reference to generally accepted standards of international practice of independent guarantees and stand-by letters of credit (article 14(1)). While the Convention leaves open the possibility of stipulating a standard somewhat lower than the generally applicable standard of care, it clearly prohibits any exemption of the guarantor from liability for lack of good faith or gross negligence.

V. PRESENTATION OF DEMAND AND PAYMENT

A. Demand by beneficiary

40. As regards the beneficiary, the process of demanding and obtaining payment involves presenting a demand for payment and any accompanying documents in accordance with the terms of the undertaking. In view of the documentary character of the demand, the form requirements of the Convention applicable to the undertaking itself (see above, para. 27) apply to the demand (article 15(1)). The place of presentation is at the counters of the guarantor/issuer at the place of issuance, unless some other place or person is stipulated for payment purposes (article 15(2)).

41. In addition, the Convention provides (article 15(3)) that by virtue of making a demand the beneficiary implicitly certifies that the demand is not made in bad faith, and that none of the circumstances exist that would justify non-payment in accordance with the provisions of the Convention on fraudulent or abusive demands for payment (see below, paras. 47 and 48).

B. Examination of demand and payment

42. The duty of the guarantor/issuer is to examine the demand and any accompanying documents to determine whether they are in facial conformity with the terms and conditions of the undertaking, and consistent with one another (article 16(1)). That determination is to have due regard to the applicable standard of international practice, a formulation that ensures that the Convention takes account of developments in practice as regards the notion of facial conformity.

43. In a provision expressly subject to variation by the terms of the undertaking, the guarantor/issuer is given a "reasonable time", up to a maximum of seven days, to examine the demand and to decide whether to pay (article 16(2)). Thus, what is deemed a "reasonable time" may well be less than seven days, but in no case more than seven days, unless some different period is stipulated. This takes into account that the time needed for examination of the demand would depend upon the nature of each case (e.g., volume and complexity of documents to be examined).

44. If a decision is taken not to pay, the guarantor/issuer is required to promptly so notify the beneficiary, indicating the grounds therefor (article 16(2)). If the demand is determined to be conforming, payment is to be made promptly, or at any later time stipulated in the undertaking.

45. The Convention recognizes that the guarantor/issuer may, unless the undertaking provides otherwise, discharge the payment obligation by exercising a right of set-off that is generally available under the applicable law (article 18). However, the Convention does not recognize any such right of set-off with respect to claims assigned by the principal/applicant or instructing party, as such a possibility would risk undermining the purpose of the undertaking.

C. Fraudulent or abusive demands for payment

46. A main purpose of the Convention is to establish greater uniformity internationally in the manner in which guarantor/issuers and courts respond to allegations of fraud or abuse in demands for payment under independent guarantees and stand-by letters of credit. That has been a particularly

troublesome and disruptive area in practice because allegations of fraud have a tendency to arise when there is a dispute as to the performance of an underlying contractual obligation. That difficulty and the resulting uncertainty have been compounded further because of the divergent notions and ways with which such allegations have been treated both by guarantor/issuers and by courts approached for provisional measures to block payment.

47. The Convention helps to ameliorate the problem by providing an internationally agreed general definition of the types of situations in which an exception to the obligation to pay against a facially compliant demand would be justified (article 19(1)). The definition encompasses fact patterns covered in different legal systems by notions such as "fraud" or "abuse of right". The definition refers to situations in which it is manifest and clear that any document is not genuine or has been falsified, that no payment is due on the basis asserted in the demand, or that the demand has no conceivable basis.

48. For additional precision, the Convention provides illustrative examples of cases in which a demand would be deemed to have no conceivable basis (article 19(2); e.g., the underlying obligation has been undoubtedly fulfilled to the satisfaction of beneficiary; the fulfilment of the underlying obligation clearly has been prevented by wilful misconduct of beneficiary; 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).

49. The Convention, by entitling but not imposing a duty on the guarantor/issuer, as against the beneficiary, to refuse payment when confronted with fraud or abuse (article 19(1)), strikes a balance between different interests and considerations at play. By allowing discretion to the guarantor/issuer acting in good faith, the Convention is sensitive to the concern of guarantor/issuers over preserving the commercial reliability of undertakings as promises that are independent from underlying transactions.

50. At the same time, the Convention affirms that the principal/applicant, in the situations referred to, is entitled to provisional court measures to block payment (article 19(3)). This recognizes that it is the proper role of courts, and not of guarantors/issuers, to investigate the facts of underlying transactions. Furthermore, the Convention does not annul any rights that the principal/applicant may have in accordance with its contractual relationship with the guarantor/issuer to avoid reimbursement of payment made in contravention of the terms of that contractual relationship.

D. Provisional court measures

51. Apart from entitling a principal/applicant or an instructing party to provisional court measures blocking payment or freezing proceeds of an undertaking in the types of cases referred to above, the Convention establishes a standard of proof to be met in order to obtain such provisional measures (article 20(1)). That standard refers to ordering of provisional measures on the basis of immediately available strong evidence of a high probability that the fraudulent or abusive circumstances are present. Reference is also made to consideration of whether the principal/applicant would be likely to suffer serious harm in the absence of the provisional measures and to the possibility of the court requiring security to be posted.

52. While authorizing provisional court measures in the cases concerned, the Convention minimizes the use of judicial procedures to interfere in undertakings by limiting the granting of provisional court measures to those types of cases, with one additional type of case. Provisional court orders

blocking payment or freezing proceeds are also authorized in the case of use of an undertaking for a criminal purpose (article 20(3)).

VI. CONFLICT OF LAWS

53. As noted above (para. 23), the Convention contains in chapter VI conflict of law rules to be applied by the courts of Contracting States in order to identify the law applicable to international undertakings as defined in article 2, regardless of whether in any given case the Convention itself would prove to be the applicable law. Those conflict of laws rules recognize a choice of law stipulated in the undertaking or demonstrated by its terms or conditions, or agreed elsewhere by the guarantor/issuer and the beneficiary (article 21).

54. In the absence of a choice of law as described above, the Convention provides for application to the undertaking of the law of the State where the guarantor/issuer has that place of business at which the undertaking was issued (article 22).

VII. FINAL CLAUSES

55. The final clauses (articles 23 to 29) contain the usual provisions relating to the Secretary-General of the United Nations as depositary and providing that the Convention is subject to ratification, acceptance or approval by those States that have signed it by 11 December 1997, that it is open to accession by all States that are not signatory States and that the text is equally authentic in Arabic, Chinese, English, French, Russian and Spanish.

56. In view of its largely suppletive character, as well as of the right of parties to exclude the Convention in its entirety, no reservations are permitted. The Convention enters into force one year from the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

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