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**UNIFORM LAW CONFERENCE OF CANADA**

**CIVIL SECTION**

**Review of Uniform Acts Implementing International Conventions**

**FINAL REPORT OF THE WORKING GROUP**

**Presented by Valérie Simard**

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# UNIFORM LAW CONFERENCE OF CANADA

## Final Report of the Working Group

August 2019

[1] The Uniform Law Conference of Canada adopted the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* in 2014. The Principles apply to the drafting of uniform legislation to implement international conventions on private international law matters by giving them force of law. In 2018, the Advisory Committee on Program Development and Management approved the establishment of a working group to amend certain uniform acts adopted by the ULCC before 2014 to ensure their conformity with the Principles. The working group presented a Progress Report to the Conference at its August 2018 meeting and the Conference resolved that the working group continue its work in accordance with the recommendations contained in the Report and report back to the Conference at its 2019 meeting.

[2] The working group is chaired by Valérie Simard, Justice Canada – Constitutional, Administrative and International Law Section (CAILS) and is composed of:

- Emmanuelle Jacques (Justice Canada – CAILS)
- Russell Getz (British Columbia – Ministry of Justice)
- Sarah Dafoe (Alberta – Ministry of Justice and Solicitor General)
- Peter Lown (Alberta – Past President of the Alberta Law Reform Institute)
- Darcy McGovern (Saskatchewan – Ministry of Justice and Attorney General)
- John Lee (Ontario – Ministry of the Attorney General)
- Frédérique Sabourin (Québec – Ministère de la Justice)

[3] The working group met 12 times by conference call between September 2018 and May 2019 and reviewed seven uniform acts that have been adopted by the Conference but not yet implemented by all jurisdictions in Canada.

[4] In addition to reviewing the uniform acts, the working group prepared the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (annex 1) which complement the Principles by providing uniform provisions and comments that reflect the recommendations set out in the Principles. The working group believes that the Guidelines could be a useful reference tool for future working

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groups preparing uniform acts to implement international conventions by giving them force of law.

[5] From its review of the uniform acts, the working group prepared the following seven uniform acts:

- Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition (Annex 2)
- Uniform Act to Implement Conventions on International Sales (Annex 3)
- Uniform Act to Implement the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Annex 4)
- Uniform Act to Implement the Convention on the International Protection of Adults (Annex 5)
- Uniform Act to Implement the United Nations Convention on the Assignment of Receivables in International Trade (Annex 6)
- Uniform Act to Implement the Convention on Choice of Court Agreements (Annex 7)
- Uniform Act to Implement the United Nations Convention on the Use of Electronic Communications in International Contracts (Annex 8)

[6] A subcommittee of the working group composed of Emmanuelle Jacques, Frédérique Sabourin and Valérie Simard prepared the French versions of the seven uniform acts including a French version of the Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition that did not have a corresponding French version in its original form.

[7] The title of each annexed uniform act was prepared in accordance with Principle 1, which provides that the title of the uniform act should contain the name of the convention and indicate that it is implemented by the act.

[8] Each uniform act includes an introductory comment that indicates that the act was prepared in accordance with the Principles and Guidelines. The comment also includes a short description of the scope and purpose of each convention.

[9] Principle 3 recommends against a purpose provision and so the purpose provisions present in the Uniform Assignment of Receivables in International Trade Act (2007) and the Uniform Hague Convention on Choice of Court Agreements Act (2010) were not

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reproduced in the uniform acts. The other original uniform acts did not include a purpose provision.

[10] The definition of the term “convention” present in the original uniform acts was not reproduced in six of the uniform acts in accordance with Principle 4. Definitions were needed in the International Sales Conventions Act that implements several international instruments and so the definitions included in the Uniform International Sales Conventions Act (1998) were reproduced in the revised act.

[11] The original uniform acts include a provision stipulating that the minister of a named department of a province or territory shall request the Government of Canada to make a declaration or reservation. This provision was omitted in the uniform acts in accordance with Principle 8. As such, the definition of “declaration” contained in the original uniform acts was not needed in the annexed uniform acts. Declarations and reservations that could be made by Canada under the conventions on behalf of implementing jurisdictions are described in the comments to the uniform acts. This includes a description of the article that allows states to identify by declaration the territorial units to which the conventions apply.

[12] In accordance with Principle 8, some of the uniform acts include a bracketed provision related to declarations or reservations.<sup>1</sup> Jurisdictions can include them in their implementing acts if Canada makes declarations or reservations on their behalf under these conventions. The provision is accompanied by a comment setting out what jurisdictions should consider in deciding whether to adopt the provision.

[13] Regarding the Uniform Act to Implement the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children more specifically, language transposing the reservations of article 55 of the Convention was included in the Uniform Act at the request of the Coordinating Committee of Senior Officials (CCSO) (Family Justice). The working group that drafted the original Uniform Act in 2001 had recommended against making this reservation. However, the analysis of implications of implementing

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<sup>1</sup> Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition, the Uniform Act to Implement the United Nations Convention on the Assignment of Receivables in International Trade, Uniform Act to Implement the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Uniform Act to Implement the Convention on Choice of Court Agreements

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this Convention have continued since then at the federal, provincial and territorial levels and it appears that some jurisdictions may be interested in requesting that this reservation be made for them.

[14] The Principles do not recommend a provision requiring good faith interpretation of a uniform act. Consequently, the good faith interpretation provision included in the Uniform International Sales Conventions Act (1998) was not reproduced in the revised act.

[15] Principle 5 provides that if necessary, the uniform act may include a rule of interpretation establishing equivalence between the terminology of the act and the terminology of the convention. Such rules were present in several of the original uniform acts but they were not replicated in the revised acts as the working group was of the opinion that they were not necessary.

[16] The Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition includes a provision that establishes an equivalency between the word “trust” in the Convention and “fiducie” in the French version of the act. The provision was necessary as the term “trust” appears in both the French and English versions of the Convention and the term “fiducie” rather than “trust” is the term generally used in French in Canada to designate a trust.

[17] Principle 5 also provides that a uniform act can include a rule of interpretation allowing reference to international materials on the convention implemented by the act. The annexed uniform acts replicate the rules of interpretation of the original uniform act with the exception of the Uniform Act to Implement Conventions on International Sales. For this act, the reference includes a direct reference to the appropriate materials rather than the indirect reference provided in the original uniform act. A provision referring to international materials was included in the Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition. The original uniform act did not include such reference as it predates the Conference’s practice of including such provisions. The comment accompanying the provision is uniform in all of the annexed uniform acts, with necessary adjustments with respect to references to the materials.

[18] Principle 6 provides that, if necessary, a uniform act may contain a rule providing for the precedence of provisions of the uniform act and the convention it implements over other acts of the Legislative Assembly. Principle 6 also emphasizes that the

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precedence rule should be as precise as possible and identify the legislative provisions over which the act has precedence. The comment to Principle 6 further stresses that the use of a broad precedence rule should be avoided. The comment to the precedence provisions included in the uniform acts restates Principle 6.

[19] As it reviewed the seven original uniform acts, the working group noted that, with the exception of the Uniform International Trusts Act (Hague Convention) (1989), each uniform act contained a provision setting out a broad precedence rule. Since the group's mandate was not to question the substantive decisions made when the original acts were prepared, a provision setting out such a rule was included in each uniform act with the exception of the uniform act mentioned above. However, the working group amended the language of some of the provisions to ensure that the provision is uniform among the acts. The working group noted that in some of the original uniform acts, the precedence provision explicitly gave precedence to both the act and the convention implemented by the act over any other acts in case of inconsistency, while others simply gave precedence to the act without referring to the convention. The working group was of the view that it was sufficient to simply refer to the act in the precedence provision because, by giving force of law to the convention, the act includes the convention and so the precedence rule would apply to conflicts between the conventions and any other acts. As such, the precedence provisions in the uniform acts do not include a reference to the conventions they implement.

[20] The uniform acts conform with Principle 7, which provides that uniform acts should give force of law to the conventions they implement. Each uniform act includes a force of law provision providing the two options set out in Principle 7. In addition, the comment accompanying the provision reflects the comment accompanying Principle 7, which explains the force of law provision and provides guidance to implementing jurisdictions with respect to the options.

[21] Principle 9 provides that a uniform act may include a provision identifying responsible authorities. The working group ensured that this provision is included in the uniform acts if it was included in the original ones and used the uniform provision provided in Principle 9 (with a minor edit in French). A comment explaining how such authorities are designated accompanies the provision.

[22] Principle 10 provides that uniform acts can include a provision to allow jurisdictions to designate courts where required by the conventions they implement. The

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uniform acts do not include such a provision, as it was not required by the conventions. The Guidelines include a uniform provision that could be included, if needed, in a future uniform act.

[23] Principle 11 provides that uniform acts may include a provision to allow jurisdictions to identify a minister responsible for the administration of the act and provides a uniform provision. Although a few of original uniform acts do not contain this provision, the provision is included in brackets in all of the uniform acts.

[24] Principle 12 allows uniform acts to include regulation-making powers and provides that it should be clearly expressed and no broader than necessary. The working group noted that the regulation-making powers provisions in the original uniform acts were not uniform among the acts. In consultation with federal drafters, the working group prepared a uniform provision and inserted it into the Guidelines and into a uniform act if the corresponding original uniform act provided for regulation-making powers.

[25] Principle 13 provides that where appropriate, uniform acts may include a provision specifying whether the crown, government or state is bound by the act and provides a uniform provision. This uniform provision was replicated in the annexed uniform acts when their corresponding original uniform act included a provision on the matter. The working group noticed that the comment to the Uniform International Sales Conventions Act (1998) implied that governments in jurisdictions to which the conventions implemented by the act apply could chose unilaterally not to be bound by the Act and thus by the conventions. The working group did not transfer this comment to the Uniform Act to Implement Conventions on International Sales as it is not accurate: the Conventions would also apply to governments in implementing jurisdictions. If the uniform act is amended in the future to include other conventions related to international sales and these conventions allow government not to be bound by them, the comment will have to be reviewed.

[26] Provisions requiring the publication by the Minister of a notice in a Gazette or similar publication of the entry into force of a convention that were included in the original uniform acts were omitted from the annexed uniform acts as the Principles do not include such provisions.



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[27] Principle 16 sets out three options for the commencement provision. These options were provided in the uniform acts along with a comment reflecting the comment accompanying Principle 16.

[28] The working group recommends the seven uniform acts annexed to this report to the Conference for adoption.

[29] The working group further recommends the annexed Guidelines to the Conference.

[30] The working group further recommends that the following corresponding non-amended uniform acts (original acts) be withdrawn by the Conference:

- Uniform International Trusts Act (Hague Convention) (1989)
- Uniform International Sales Conventions Act (1998)
- Uniform Parental Responsibility and Measures for the Protection Of Children (Hague Convention) Implementation Act (2001)
- Uniform International Protection of Adults (Hague Convention) Implementation Act (2001)
- Uniform Assignment of Receivables in International Trade Act (2007)
- Uniform Hague Convention on Choice of Court Agreements Act (2010)
- Uniform Electronic Communications Convention Act (2011)



**Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention (2019)**

**Uniform Act to Implement the [*title of Convention*] [(*insert year of adoption by ULCC*)]**

**Comment:** In 2018, the ULCC tasked a Working Group to review uniform acts adopted by the ULCC in light of the *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* which were adopted by the ULCC in 2014. The Working Group prepared these Guidelines which complement the Principles by providing uniform provisions and comments that reflect the recommendations set out in the Principles. Working groups preparing uniform acts to implement international conventions should refer to the Guidelines and the Principles to assist them in this task.

The title of the uniform act should include the name of the convention and where needed, the name of the organization under which the convention was adopted and the date at which it was adopted or at which it entered into force internationally. Such information would be needed if including only the name of the convention in the title could lead to confusion.<sup>2</sup> The title should also contain an indication that the act implements the convention.

The introductory comment of the uniform act should state that it is drafted in accordance with the Principles and the Guidelines. In addition, it should state that the uniform act implements a convention and include a short description the convention's scope and purpose.

The comment should also provide the following explanation if a convention includes an article which allows states to identify by declaration the territorial units to which the convention applies:

Article [#] is a standard provision in private international law conventions. It allows federal states to identify by declaration the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon [signature, ratification, accession, acceptance or approval] or at any time thereafter. Canada will make declarations pursuant to Article [*# of article as above*] upon the request of provinces and territories that have enacted

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<sup>2</sup>See Principle 1, *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention*.

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implementing legislation. The content of Article [#] is reflected in the force of law provision of the Uniform Act.

If relevant, the comment should provide that an enacting jurisdiction will have to indicate to Justice Canada whether Canada shall make for that jurisdiction any of the declarations and reservations permitted by the convention and state which articles of the convention should be reviewed by jurisdictions for this purpose. The comment should also describe the possible declarations and reservations and, where applicable, include recommendations as to whether jurisdictions should request that they be made. In addition, the comment should state that if a declaration or reservation applicable to a jurisdiction is made in relation to a jurisdiction following the enactment of the jurisdiction's implementing legislation, the jurisdiction may amend its act to reflect the content of such declaration or reservation. Finally, the comment should indicate that any amendment by a jurisdiction of a provision giving effect to a substantive reservation or declaration would have to be coordinated with a subsequent declaration or reservation.

The comment could mention, where applicable, that the convention requires Contracting States to communicate certain information to the treaty depositary or the organization under which the convention was negotiated and that this information must be provided by the enacting jurisdictions to Justice Canada so that it may be communicated accordingly.

Finally, if needed, the comment should explain decisions taken by the drafters of the uniform act.

***[Definitions***<sup>3</sup>

**1. In this Act,**

***[insert appropriate definitions, if any]***

**Comment:** Where a uniform act includes this provision, the comment accompanying it should state the following: “The decision to put definitions and rules of interpretation under the same or separate sections depends on the practice of each jurisdiction. They appear in separate sections in this Uniform Act”.]

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<sup>3</sup> See *ibid.* at Principle 4.

*[Interpretation*<sup>4</sup>

**2. In interpreting the Convention, recourse may be had to the [...].**

**Comment:** Where a uniform act includes this provision, the comment accompanying it should provide information on supplementary sources of interpretation such as in the following example:

The Explanatory Report was prepared by [...] and is available on the Hague Conference on Private International Law website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

The comment would also provide that “Section [#] is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.”]

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<sup>4</sup> See *ibid.* at Principle 5.

*[Inconsistent Acts]*<sup>5</sup>

**3. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.**

**Comment:** Where it is determined that this provision should be included in the uniform act, the accompanying comment should state the following:

Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.]

*Force of law*<sup>6</sup>

*Option A*

**4. The [title of Convention] set out in the Schedule has force of law in [jurisdiction] [mechanism in the Convention for calculating the date from which the [declaration extending the application of the Convention to the jurisdiction/instrument of ratification or accession] has effect internationally] in accordance with Article[s] [#] of the Convention.**

*Option B*

**4. The [title of Convention] set out in the Schedule, has force of law in [jurisdiction].**

**Comment:** Private international law conventions now typically contain a provision which allows federal states to identify by a declaration made either with the deposit of their instrument of ratification, accession, acceptance or approval or subsequently, the territorial units to which the convention is to extend. Where this is the case, if possible option A of force of law provision should set out the mechanism in the convention for calculating the

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<sup>5</sup> See *ibid.* at Principle 6.

<sup>6</sup> See *ibid.* at Principle 7.

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date from which the declaration extending the application of the convention to the jurisdiction has effect internationally and refer to the corresponding article[s].

It may not be possible for a jurisdiction to ascertain at the time of enactment, the period after which the declaration would have effect internationally. This would be the case when the mechanism prescribed by the convention sets out different periods depending on the circumstances surrounding the deposit of the declaration. For instance, the period may be different if a declaration is deposited: (1) before the convention enters into force internationally; (2) with a state's instrument of ratification, accession, acceptance or approval; or (3) after the deposit of the latter instrument but before the convention starts applying to the state internationally. Where the period cannot be ascertained at the time of enactment, the shorter form of option A which is set out in the uniform comment below should be selected as the force of law provision.

Where a state does not make such a declaration with the deposit of its instrument of ratification or accession or where the convention does not permit such a declaration, the convention will start applying to all of the state's territorial units when the state's instrument of ratification or accession has effect internationally. In practice, Canada will make such a declaration when it is permitted by the convention. Where it is not, option A should set out the mechanism in the convention for calculating the date from which the instrument of ratification or accession has effect internationally and refer to the corresponding article[s].

The title of the convention is provided in the force of law provision. The place where the convention was concluded as well as the date on which it was concluded may also be provided in the force of law provision if including this information is needed to clarify the convention to which the uniform act gives force of law.

The comment accompanying this provision should state the following:

The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice

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of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in Article [#] between the deposit by Canada of [its instrument of ratification *or* a declaration extending the application of the Convention to a jurisdiction] and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying.



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This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to Article [#] of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

**The [title of Convention] set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with Article [#] of the Convention.**

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

### *[Application of Convention]<sup>7</sup>*

**5. Where appropriate, insert provision providing the content of a declaration or reservation made by Canada that is applicable to the enacting jurisdiction.**

**Comment:** Where a uniform act includes this provision, the comment accompanying it should state the following:

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<sup>7</sup> See *ibid.* at Principle 8.

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The [declaration[s]/reservation[s]] permitted by the Convention [is/are] described in the introductory comment. Giving force of law to the Convention gives force of law to its provision[s] on [declaration[s]/reservation[s]], which will, in many cases, operate to make the [declaration[s]/reservation[s]] made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty, it might be advisable to reflect [its/their] content in the act, especially if [it/they] narrow or widen the scope of application of the Convention.]

### ***[Responsible Authority]***<sup>8</sup>

**6. The [name of authority designated by Canada in consultation with the jurisdiction] is the [responsible authority under the Convention] for [jurisdiction] for the purposes of the Convention.**

**Comment:** Where a uniform act includes this provision, the comment accompanying it should state the following:

In line with Article [#] of the Convention, an enacting jurisdiction will designate or identify the authority that will act as the [*responsible authority under the Convention*] for the purposes of this Convention and Canada will communicate this information to [*name of the international body to which the information must be communicated*].

The [*responsible authority*] may be identified in the act. Where the [*responsible authority*] has not been identified by a jurisdiction before it adopts its implementing act or where it is liable to change over time, it may be more appropriate for the jurisdiction to identify it in regulations.

Some jurisdictions may choose not to identify the [*responsible authority*] in their act or regulations where they may have recourse to other mechanisms to assign authority, such as by orders in council or by simple administrative assignment of responsibilities.]

### ***[Court Designation]***<sup>9</sup>

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<sup>8</sup> See *ibid.* at Principle 9.

<sup>9</sup> See *ibid.* at Principle 10.

**7. The [name of court] is the competent court for the purposes of Article [Article #] of the Convention.**

**Comment:** A convention may provide for the designation of courts that have responsibilities under the convention. Where a uniform act includes this provision, the comment accompanying it should state the following:

Enacting jurisdictions that designate responsible courts in their jurisdiction must indicate this to Justice Canada so that Canada may communicate this information at the international level by way of [a declaration/notice] to the treaty depository. Jurisdictions must decide whether the designation should be specified in their implementing act or regulations. Jurisdictions should take the following matters into consideration in making this decision:

- Does the designation of a court have the effect of limiting the jurisdiction of other courts in the jurisdiction?
- Was the designation made for a specific purpose such as to enforce foreign arbitral awards?
- Are new functions assigned to the court as a consequence of the designation?
- Would reflecting the designation in the act provide helpful guidance to those seeking to have recourse to the designated court?

An affirmative answer to one or more of these questions may favour including a provision in the act to specify which court has been designated and the purpose of the designation.]

**[Minister Responsible for the Administration of the Act]<sup>10</sup>**

**8. The Minister of [Ministry/Department] is responsible for the administration of this Act.**

**Comment:** Where a uniform act includes this provision, the comment accompanying it should state the following: “Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.”]

**[Binding on Crown/Government/State]<sup>11</sup>**

**9. This Act [is/is not] binding on the [Crown/Government/ State [of jurisdiction]].**

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<sup>10</sup> See *ibid.* at Principle 11.

<sup>11</sup> See *ibid.* at Principle 13.

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**Comment:** Jurisdictions should consult the relevant interpretation legislation to ascertain the need to specify whether the Crown/Government/State is bound or not bound by acts.

The content of the comment that will be included under this provision in the uniform act will depend on whether the convention is binding on governments. When drafting the uniform act, it should be determined whether the convention which it implements binds governments, and if it does, whether this is clear from the text of the convention. If it is clear that it does and the uniform act gives force of law to the convention, it is not necessary to specify that the convention is binding on the Crown/Government/State. However, in the interest of transparency, it may be desirable to do so in jurisdictions where such provisions are usually included in acts.

**[Regulations]<sup>12</sup>**

**10. The [name of regulation-making authority] may make regulations for carrying out the purposes of this Act.**

**Comment:** The comment accompanying this provision in the uniform act should state the following: “Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulation-making powers should be clearly expressed and should be no broader than is necessary.”]

**Commencement<sup>13</sup>**

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**11. This Act comes into force on [assent/insert the date of assent to this Act].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**11. This Act comes into force on [proclamation/ the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

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<sup>12</sup> See *ibid.* at Principle 12.

<sup>13</sup> See *ibid.* at Principle 16.

**11. This Act comes into force on [*insert day on which the Convention applies to jurisdiction*].**

**Comment:** The comment accompanying this provision in the uniform act should state the following:

There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention

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will apply to the jurisdiction and the date itself may be too short to issue a proclamation.

- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule** [*Insert the full text of the Convention. It is available on the treaty depositary's website at: ...*]

**Uniform Act to Implement the Convention on the Law Applicable to Trusts and on their Recognition (2019)**

**Comment:** This Uniform Act implements the *Convention on the Law Applicable to Trusts and on their Recognition*, which provides rules to determine the law applicable to trusts, and requires the recognition of foreign trusts by Contracting States. Canada has been a party to this Convention since September 20, 1992.

The present Uniform Act is drafted in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* adopted by the ULCC in [2019]. The Uniform International Trusts Act (Hague Convention) (1989) was withdrawn by the ULCC with the adoption of this Uniform Act.

Canada has been a party to this Convention since September 20, 1992. This Uniform Act is addressed to jurisdictions which have not yet implemented the Convention.

The Convention permits Contracting States to make several reservations and a declaration. Article 29 is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, acceptance, approval or accession or at any time thereafter. Canada will make declarations pursuant to Article 29 upon the request of provinces and territories that have enacted implementing legislation. The content of Article 29 is reflected in the force of law provision of this Uniform Act.

An enacting jurisdiction will have to indicate to Justice of Canada whether Canada shall make for that jurisdiction at the time of the deposit of the Article 29 declaration, any of the reservations permitted by Articles 16, 21 or 22 or the declaration permitted by Article 20 of the Convention. If the Article 20 declaration is deposited by Canada in relation to a jurisdiction following the enactment of the implementing legislation, the jurisdiction may amend its act to reflect the content of the declaration. In addition, any amendment by a jurisdiction of a provision giving effect to a substantive reservation or declaration would have to be coordinated with a subsequent declaration or a withdrawal of the reservation.

***Interpretation***

**[1(1) The word “fiducie” used in the French version of this Act has the same meaning as the word “trust” used in the French version of the Convention.]**

**Comment:** Jurisdictions that legislate bilingually will need to examine their law to determine whether the term "fiducie" should appear in the French version of their implementing legislation instead of the term "trust". If the term "fiducie" is not used, this rule of interpretation should be excluded.

**1(2) In interpreting the Convention, recourse may be had to the *Explanatory Report on the 1985 Hague Trusts Convention*.**

**Comment:** The Explanatory Report was prepared by Alfred E. von Overbock and is available on the Hague Conference on Private International Law. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 1 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.

***[Inconsistent Acts***

**2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set



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out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

### *Force of Law*

#### *Option A*

**3. The *Convention on the Law Applicable to Trusts and on their Recognition* set out in the Schedule has force of law in [jurisdiction] on the first day of the third calendar month after the notification by Canada of a declaration extending the application of the Convention to [jurisdiction] in accordance with subparagraph 30(2)(c) of the Convention.**

#### *Option B*

**3. The *Convention on the Law Applicable to Trusts and on their Recognition* set out in the Schedule has force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in subparagraph 30(2)(c) between the deposit by Canada of a declaration extending the application of the Convention to a jurisdiction and the application

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of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to subparagraph 30(2)(c) of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

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**The *Convention on the Law Applicable to Trusts and on their Recognition* set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with subparagraph 30(2)(c) of the Convention.**

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

***Application of the Convention***

**4(1). This Act does not apply to conflicts solely between the laws of the provinces and territories of Canada.**

**4(2). Paragraph 16(2) of the Convention does not apply in [jurisdiction].**

**4(3). Chapter III of the Convention applies only to trusts the validity of which is governed by the law of a Contracting State.**

**4(4). This Act does not apply to trusts created [or declared] before the Convention has force of law in [jurisdiction].**

**OR**

**4(4). Article 22 of the Convention is not to be construed as affecting the law to be applied in relation to anything done or omitted under a trust before the Convention has force of law in [jurisdiction].**

**4(5). The Convention is extended to trusts declared by judicial decisions including constructive trusts and resulting trusts.**

**4(6). Nothing in this Act is to be construed as requiring that recognition or effect be given to a trust declared by judicial decision in another state or a severable aspect of**

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**such a trust, if [*the appropriate court in jurisdiction*] is satisfied that there is a substantial reason for refusing to give recognition or effect to the trust or aspect.]**

**Comment:** Subsection 4(1) makes it clear that the Convention does not apply between jurisdictions in Canada that have implemented the Convention and removes the discretion of courts to apply the Convention between jurisdictions in Canada. Article 24 of the Convention provides that “[a] State within which different territorial units have their own rules of law in respect of trusts is not bound to apply the Convention to conflicts solely between the laws of such units.”

Giving force of law to the Convention gives force of law to its provisions on declarations and reservations, which will, in many cases, operate to make the declarations or reservations made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty, it might be advisable to reflect their content in the act, especially a reservation that narrows or widens the scope of application of the Convention.

Subsection (2) refers to the reservation permitted by Article 16, subsection (3) provides the content of a reservation permitted by Article 21, subsection (4) of a reservation permitted by Article 22 and subsection (5) of a declaration permitted by Article 20. Subsection (6) specifies the scope of subsection (5). For a reservation under Article 22, "or declared" should be deleted from subsection (4) if the Convention is not extended under Article 20 to trusts declared by judicial decisions including constructive trusts and resulting trusts. At the time of adoption of this Uniform Act by the ULCC, the reservation provided at subsection (2) applied only to one Canadian jurisdiction and the declaration under subsection (5) applied to all of jurisdictions in which the Convention applies.

***[Minister Responsible for the Administration of the Act***

**5. The Minister of [*Ministry/Department*] is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

*[Binding on Crown/Government/State*

**6. This Act binds the [Crown/Government/State [of *jurisdiction*]].**

**Comment:** If a jurisdiction's interpretation legislation already provides that the Crown is bound unless otherwise stated in the particular act, there is no need to include this section.

***Commencement***

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**7. This Act comes into force on [assent / *insert the date of assent to this Act*].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [proclamation / the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [*insert day on which the Convention applies to jurisdiction*].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.

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- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule:** *[Insert the full text of the Convention. It is available on the treaty depositary's website at:*

*[https://treatydatabase.overheid.nl/en/Verdrag/Details/000066/000066\\_Gewaarmedkt\\_0.pdf](https://treatydatabase.overheid.nl/en/Verdrag/Details/000066/000066_Gewaarmedkt_0.pdf)*]

**Uniform Act to Implement Conventions on International Sales (2019)**

**Comment:** This Uniform Act implements the *Convention on the Limitation Period in the International Sale of Goods* and the *Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods*. These conventions establish a standard limitation period of four years for the initiation of legal proceedings arising from contracts for the international sale of goods. In the absence of any expression to the contrary by the parties to a sales contract, the conventions apply when the parties have a place of business in Contracting States or when the law of a Contracting State applies either through the applicable rules of private international law or by virtue of the choice of the contractual parties.

The Uniform Act also implements the *United Nations Convention on Contracts for the International Sale of Goods*. Canada has been party to this Convention since 1991 and it applies throughout the country. This Convention establishes uniform rules for the international sale of goods. The provisions of the Convention deal with the formation of the contract and the rights and obligations of the seller and buyer. The Convention does not govern the validity of the contract or its terms, nor does it deal with the seller's liability outside the contract. As with the unamended and amended Limitation Convention, in the absence of any expression to the contrary by the parties to the sales contract, the Convention applies when the parties have a place of business in Contracting States or when the law of a Contracting State applies either through the applicable rules of private international law or by virtue of the choice of the contractual parties.

Finally, the Uniform Act allows the addition of other conventions related to international sales in the future, such as the *Unidroit Convention of 17 February 1983 on Agency in the International Sale of Goods* or a possible future convention in relation to sale of services.

The ULCC adopted the Uniform International Sales Conventions Act in 1998. The present act updates that act in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (2019). As the act does not bring any substantive changes to the 1998 act, it is addressed at jurisdictions that have not adopted that act. The 1998 act was withdrawn by the ULCC with the adoption of this act.

The wording of Article 31 is the same in both the amended and unamended Limitation Convention. The article is a standard provision in private international law conventions. It

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allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification or accession or at any time thereafter. Canada will make declarations pursuant to Article 31 upon the request of provinces and territories that have enacted implementing legislation. The content of Article 31 is reflected in the force of law provision of this Uniform Act.

### *Definitions*

#### **1. In this Act,**

**"Amended Limitation Convention"** means the *Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods*, the text of which is prepared in accordance with Article XIV of the Protocol and is set out in Schedule 3. (Convention modifiée sur la prescription)

**"Limitation Convention"** means the *Convention on the Limitation Period in the International Sale of Goods*, the text of which is set out in Schedule 2. (Convention sur la prescription)

**"Protocol"** means the *Protocol amending the Convention on the Limitation Period in the International Sale of Goods*, the text of which is set out in Schedule 4. (Protocole)

**"Sales Convention"** means the *United Nations Convention on Contracts for the International Sale of Goods*, the text of which is set out in Schedule 1. (Convention sur la vente)

**Comment:** The decision to put definitions and rules of interpretation under the same or separate sections depends on the practice of each jurisdiction. They appear in separate sections in this Uniform Act.

The Sales Convention, Limitation Convention and Amended Limitation Convention are set out in the schedule. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.



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The Protocol is set out in the schedule of the Uniform Act and implementing jurisdictions should set it out in the schedule to their implementing act for dissemination purposes. The act does not give the force of law to the Protocol. Canada will accede to the Protocol in order to become a Party to the Amended Limitation Convention and the Limitation Convention.

### *Interpretation*

#### **2. In interpreting the Amended Limitation Convention and the Limitation Convention, recourse may be had to:**

**(a) the *Yearbook of the United Nations Commission on International Trade Law, 1972*, vol. III, (New York: UN, 1973) (UN Doc. A/CN.9/SER.A/1972);**

**(b) the *Yearbook of the United Nations Commission on International Trade Law, 1972*, vol. III, supplement (New York: UN, 1973) (UN Doc. A/CN.9/SER.A/1972/Add.1); and**

**(c) “Commentary on the Convention on the Limitation Period in the International Sale of Goods” (UN Doc. A/CONF.63/17) in *Yearbook of the United Nations Commission on International Trade Law, 1979*, vol. X (New York: UN, 1981) (UN Doc. A/CN.9/SER.A/1979).**

**Comment:** The materials referred to in the provision are available on UNCITRAL’s website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Conventions. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 2 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the

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Conventions. It is expected that other helpful resources will emerge. In particular, over time UNCITRAL's Case Law on UNCITRAL Texts (CLOUT) will provide a useful source for the evolving jurisprudence on the Conventions from the courts in all Contracting States.

*[Inconsistent Acts*

**3. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

*Force of Law*

**4(1) The Sales Convention has force of law in [jurisdiction].**

*Option A.1 - In cases where Canada has acceded to the Conventions and the Conventions are already applicable to Canada, jurisdictions can enact:*

**4(2) The Limitation Convention and the Amended Limitation Convention have force of law in [jurisdiction] on the first day of the month following the expiration of six months after the receipt, by the Secretary-General of the United Nations, of a declaration by Canada extending the application of the Convention to [jurisdiction] in accordance with paragraph 40(1) of these Conventions.**

*Option A.2 - In all other cases, jurisdictions can enact:*

**4(2) The Limitation Convention and the Amended Limitation Convention have force of law in [jurisdiction] from the date determined in accordance with paragraph 40(1) of these Conventions.**

*Option B*

**4(2) The Limitation Convention and the Amended Limitation Convention have force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the Conventions in their entirety. Giving force of law only to some articles of the Conventions is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Sales Convention already applies internationally to all jurisdictions in Canada. Subsection (1) ensures that it continues to have force of law in jurisdictions which enact this Uniform Act.

Subsection (2) offers two main options with respect to the force of law provision for the Limitation Convention and the Amended Limitation Convention with option A subdivided further into sub-options A.1 and A.2. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in Article 40 between the deposit by Canada of a declaration extending the application of these Conventions to a jurisdiction and the application of the Conventions to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of subsection (2) and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to both the Limitation Convention and Amended Limitation Convention until these Conventions apply to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which these Conventions apply to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Limitation Convention and the Amended Limitation Convention start applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Conventions start applying to the jurisdiction at international law before the act

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comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Conventions. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting options A of both the uniform force of law and commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Limitation Convention and the Amended Limitation Convention have started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Conventions start applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Conventions apply could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Conventions.

Sub-option A.1 reproduces in full the mechanism for calculating the date on which the Conventions would start applying to the jurisdiction internationally. As indicated above, this sub-option can be selected when, at the time of enactment, Canada has acceded to the Conventions and the Conventions are already applicable to Canada (i.e. when the Secretary-General of the United Nations will be receiving the declarations extending the application of the Conventions to the enacting jurisdiction after the Conventions have become applicable to Canada internationally).

Sub-option A.2 refers to paragraph 40(1) of the Conventions. The reader of the Act would need to refer to the text of the Conventions to calculate the date on which the Conventions would start applying to the jurisdiction internationally. Sub-option A.2 would have to be selected by a jurisdiction that enacts its implementing act before the Conventions apply to Canada internationally because the period after which the Conventions would apply to the jurisdiction would not be known at the time of enactment. For a declaration deposited before the Conventions apply to Canada, the period would be six months from the deposit of the declaration if the declaration accompanies Canada's instrument of accession. For a declaration deposited after the instrument of accession but before the Conventions have become applicable to Canada internationally, the time would be the remainder of the six months calculated from the date of deposit of the instrument of accession. For a declaration deposited after the Conventions apply to Canada internationally, the period would be six months from the date of the receipt by the Secretary-General of the United Nations of the declaration.

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Option B allows a jurisdiction to give force of law to both the Limitation Convention and the Amended Limitation Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Conventions already apply to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Conventions will not have effect in the jurisdiction by legislation before they apply to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Limitation Convention and the Amended Limitation Convention apply to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

### *[Which Convention Applies Re Limitation Periods]*

**5(1) The Amended Limitation Convention applies in respect of any State that is a Contracting Party to that Convention.**

**5(2) The Limitation Convention applies in respect of any State that is a Contracting Party to that Convention and is not a Contracting Party to the Amended Limitation Convention.]**

**Comment:** This provision indicates when the Limitation Convention rather than the Amended Limitation Convention applies. Subsection (1) transcribes part of Article 44 bis of the Amended Limitation Convention and subsection (2) transcribes the rest of Article 44 bis and confirms that Canada did not make a declaration under this Article. Implementing jurisdictions may decide to omit this provision since the Amended Limitation Convention is given force of law by the act and so it is not necessary to restate its articles. However, including this provision could be useful to parties to a contract by making information on the application of the Conventions more readily available to them.

### *[Non-application of Conventions by Parties]*

**6. The parties to a contract may:**

**(a) exclude the application of a Convention set out in Schedule I, II or III by expressly providing in the contract that the Convention does not apply to the contract; or**

**(b) otherwise exclude the application of a Convention set out in Schedule I, II or III, or derogate from or vary the effect of any of the Convention's provisions, in accordance with the terms of the Convention.]**

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**Comment:** The Limitation Convention, the Amended Limitation Convention and the Sales Convention will automatically apply to contracts for the international sale of goods that fall within their scope of application. However, each Convention also provide that parties may exclude the Convention's application (Article 3 of the Limitation Convention and Amended Limitation Convention and Article 6 of the Sales Convention) or limit the Convention's application (Article 6 of the Sales Convention). These provisions specify that an express exclusion will always result in the non-application of the excluded convention. It also reminds parties that the Conventions provide additional means of limiting their application. Implementing jurisdictions may decide to omit this provision since the Conventions are given force of law and so it is not necessary to restate their articles. However, including this provision could be useful to parties by making information on the application of the Conventions more readily available.

### ***[Minister Responsible for the Administration of the Act***

**7. The Minister of *[Ministry/Department]* is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

### ***[Binding on Crown/Government/State***

**8. This Act is binding on the *[Crown/Government/State [of jurisdiction].]***

**Comment:** If a jurisdiction's interpretation legislation already provides that the Crown/Government/State is bound unless otherwise stated in the particular act, there is no need to include this provision.

### ***[Regulations***

**9. The *[name of regulation-making authority]* may make regulations for carrying out the purposes of this Act.]**

**Comment:** Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulation-making powers should be clearly expressed and should be no broader than is necessary.

### ***[Repeal***

**10. The [provincial or territorial Act that adopted the Uniform International Sale of Goods Act] is repealed.]**

**Comment:** The Uniform International Sale of Goods Act and the Act to Amend the Uniform Limitation of Actions Act (i.e., a uniform act adopted by the ULCC in 1976 to implement the *Convention on the Limitation Period in the International Sale of Goods*) are both withdrawn and replaced by this Uniform Act. Jurisdictions may either amend or repeal their legislation adopting the Uniform International Sales of Goods Act depending on the number of modifications required.

***Commencement***

*Option A – Commencement on assent before the Limitation Convention and Amended Limitation Convention apply to jurisdiction*

**11. This Act comes into force on [assent / insert date of assent to this Act].**

*Option B – Commencement on proclamation on the day on which the Limitation Convention and Amended Limitation Convention apply to jurisdiction*

**11. This Act comes into force on [proclamation / the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Limitation Convention and Amended Limitation Convention apply to jurisdiction*

**11. This Act comes into force on [insert day on which the Limitation Convention and Amended Limitation Convention apply to jurisdiction].**

**Comment:** There is a need to ensure that the Limitation Convention and Amended Limitation Convention have force of law in the implementing jurisdiction when they start applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with subsection 4(1) which gives force of law to the Sales Convention and option A of subsection 4(2) which gives force of law to the Limitation Convention and Amended Limitation Convention so that the Sales Convention which

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already applies throughout Canada will continue to have force of law in the enacting jurisdiction and the Limitation Convention and Amended Limitation Convention will only have force of law on the day on which they apply to the jurisdiction at international law.

- This would avoid the necessity for the federal and provincial or territorial governments to coordinate the application of the Limitation Conventions to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when these Conventions start applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Limitation Convention and Amended Limitation Convention start applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Limitation Convention and Amended Limitation Convention apply to the jurisdiction at international law. The Sales Convention continues to apply to the enacting jurisdiction upon proclamation of the act.

- Option B would need to be combined with option B of subsection 4(2) with respect to the Limitation Conventions.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Limitation Convention and Amended Limitation Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which these Conventions will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Conventions will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of subsection 4(2) if proclamation is issued before the Limitation Conventions start applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Limitation Convention and Amended Limitation Convention apply to the jurisdiction at international law.

- This option would be combined with option B of subsection 4(2).
- Enacting jurisdictions can select this option if the day on which the Limitation Convention and Amended Limitation Convention will apply to their jurisdictions is known at the time of the adoption of the act.



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**Schedule** *[Insert the full text of each convention and of the protocol. The full texts are available on the treaty depositary's website:*

*<https://treaties.un.org/Pages/UNTSONline.aspx?id=2&clang=en>*]

*Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods*

*Convention on the Limitation Period in the International Sale of Goods*

*Protocol amending the Convention on the Limitation Period in the International Sale of Goods*

*United Nations Convention on Contracts for the International Sale of Goods*

**Uniform Act to Implement the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (2019)**

**Comment:** This Uniform Act implements the *Convention on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* which sets rules to protect children involved in cross-border family law and child welfare situations by harmonizing conflict of laws rules applicable to parental responsibility and to child protection measures and establishing a structure for effective co-operation between Contracting States to assist families in these situations.

The present Uniform Act is drafted in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (2019). The Uniform Act to Implement the Hague Convention on Parental Responsibility and Protection of Children (2001) was withdrawn by the ULCC with the adoption of this Uniform Act.

An enacting jurisdiction will have to indicate to Justice Canada whether Canada shall make for that jurisdiction any of the declarations and reservations permitted by the Convention. Articles 55, 59 and paragraph 34(2) of the Convention should be reviewed for this purpose.

Article 59 is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, acceptance, approval or accession or at any time thereafter. The content of Article 59 is reflected in the force of law provision of this Uniform Act.

Paragraph 34(2) permits Canada to declare, in relation to a particular province or territory, that competent authorities from other Contracting States shall address requests for information relevant to the protection of a child under paragraph 34(1) exclusively to the Central Authority of the province or territory. Since this declaration does not modify the substantive legal scope of the Convention, it is not necessary to reflect its content in the Uniform Act.

Article 55 permits Contracting States to a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory, and/or b) reserve the right not to recognise any parental responsibility or measure in so far as it is

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incompatible with any measure taken by its authorities in relation to that property. When making either reservation, a Contracting State may limit it to certain categories of property – for example, to personal / movable or real / immovable property. In 2001, the Members of the ULCC Working Group on the Hague Conventions on the Protection of Adults and Children had suggested that jurisdictions should avoid restricting the application of the Convention. However, the analysis of implications of implementing this Convention has continued since then at the federal, provincial and territorial level and some jurisdictions may be interested in requesting that this reservation be made for them. In light of this, at their 2019 meeting, the Coordinating Committee of Senior Officials (Family Justice) formally asked the ULCC Working Group reviewing this Uniform Act to propose language transposing the Article 55 reservation (see articles 4 and 5 below) in the Uniform Act.

The Convention also requires Contracting States to communicate certain specific information to the Permanent Bureau of the Hague Conference on Private International Law (Hague Conference), and this information must be provided by the enacting jurisdictions to Justice Canada so that it may be communicated accordingly. See Articles 29, 40 and 44.

### *Interpretation*

#### **1. In interpreting the Convention, recourse may be had to the *Explanatory Report on the 1996 Hague Child Protection Convention*.**

**Comment:** The Explanatory Report was prepared by Paul Lagarde and is available on the Hague Conference website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

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Section 1 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.

### *[Inconsistent Acts*

**2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

### *Force of Law*

#### *Option A*

**3. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children set out in the Schedule has force of law in [jurisdiction] on the first day of the month following the expiration of three months after the notification by Canada of a declaration extending the application of the Convention to [jurisdiction] in accordance with subparagraph 61(2)(c) of the Convention.**

#### *Option B*

**3. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children set out in the Schedule, has force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

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The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in subparagraph 61(2)(c) between the deposit by Canada of a declaration extending the application of the Convention to a jurisdiction and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that

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people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to subparagraph 61(2)(c) of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

***The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with subparagraph 61(2)(c) of the Convention.***

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

***[Jurisdiction of Authorities to Take Measures of Protection of Property***

**4. Further to subparagraph 55(1)(a) of the Convention, the authorities of [jurisdiction] have jurisdiction to take measures directed to the protection of any [category of property] property of a child situated in its territory.]**

***[Possibility of Non-Recognition in terms of Protection of Property***

**5. Further to subparagraph 55 (1)(b) of the Convention, the recognition of any parental responsibility or any measure of protection may be refused in [jurisdiction] if the responsibility or measure is incompatible with any measure taken by the authorities of [jurisdiction] in relation to the [category of property] property of a child situated in its territory.]**

**Comment:** The declarations and reservations permitted by the Convention are described in the introductory comment. Giving force of law to the Convention gives force of law to its provisions on declarations and reservations, which will, in many cases, operate to make

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the declarations or reservations made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty, it might be advisable to reflect their content in the act, especially those that narrow or widen the scope of application of the Convention. If Canada withdraws a reservation relating to a jurisdiction after the jurisdiction has adopted its implementing legislation, the jurisdiction will need to amend its legislation accordingly and coordinate the coming into force of the amendments with the effective date of the withdrawal.

Sections 4 and 5 of this act suggest wording to transpose both reservations permitted under Article 55 of the Convention. The terms “category of property” in brackets reflect the fact that a jurisdiction could ask that the reservation be restricted to a certain category of property, such as immovable or real property, in line with paragraph 55 (2) of the Convention.

### ***[Central Authority***

#### **6. The *[name of authority designated by Canada in consultation with the jurisdiction]* is the Central Authority for *[jurisdiction]* for the purposes of the Convention.]**

**Comment:** In line with Article 29 of the Convention, an enacting jurisdiction shall designate or identify the authority that will act as the Central Authority for the purposes of the Convention and Canada will communicate this information to the Permanent Bureau of the Hague Conference.

The Central Authority may be identified in the act. Where the Central Authority has not been identified by a jurisdiction before it adopts its implementing act or where it is liable to change over time, it may be more appropriate for the jurisdiction to identify it in regulations.

Some jurisdictions may choose not to identify the Central Authority in their act or regulations where they may have recourse to other mechanisms to assign authority, such as by orders in council or by simple administrative assignment of responsibilities.

The role of the Central Authority to be designated under the Convention by each province or territory is the key to much of the practical operation of the Convention. Its duties are not described in detail in this Uniform Act, because they are set out in the Convention itself.

### ***[Minister Responsible for the Administration of the Act***

#### **7. The Minister of *[Ministry/Department]* is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

### ***[Regulations***

**8. The [name of regulation-making authority] may make any regulations for carrying out the purposes of this Act.]**

**Comment:** Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulations may be thought desirable, or may be necessary under existing law of the enacting jurisdiction, to enable the minister to delegate some duties under the Convention, facilitate communications and make arrangements with public authorities or other bodies to act under the Convention, or to facilitate the operation of the Convention. Regulation-making powers should be clearly expressed and should be no broader than is necessary.

***Commencement***

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**9. This Act comes into force on [assent/insert the date of assent to this Act].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**9. This Act comes into force on [proclamation/ the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**9. This Act comes into force on [insert day on which the Convention applies to jurisdiction].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.



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- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule** [*Insert the full text of the Convention. It is available on the treaty depositary's website at:*

[https://treatydatabase.overheid.nl/en/Verdrag/Details/007396/007396\\_Gewaarmerkt\\_0.pdf](https://treatydatabase.overheid.nl/en/Verdrag/Details/007396/007396_Gewaarmerkt_0.pdf)]

**Uniform Act to Implement the Convention on the International Protection of Adults (2019)**

**Comment:** This Uniform Act implements the *Convention on the International Protection of Adults*, which sets rules to protect incapacitated adults and their property when they are involved in cross-border situations by harmonizing applicable conflict of law rules and establishing a structure for effective co-operation on such cases between Contracting States.

The ULCC adopted the Uniform International Protection of Adults (Hague Convention) Implementation Act in 2001. The present act updates that act in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (2019). As the act does not bring any substantive changes to the 2001 act, it is addressed at jurisdictions that have not adopted that act. The 2001 act was withdrawn by the ULCC with the adoption of this act.

An enacting jurisdiction will have to indicate to Justice Canada whether Canada shall make for that jurisdiction the declaration permitted by paragraph 32(2) and Article 55 of the Convention.

Article 55 is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, acceptance, approval or accession or at any time thereafter. The content of Article 55 is reflected in the force of law provision of this Uniform Act.

Paragraph 32(2) permits Canada to declare, in relation to a particular province or territory, that competent authorities from other Contracting States shall address requests for information relevant to the protection of an adult under paragraph 32(1) exclusively to the Central Authority of the province or territory. Since this declaration does not modify the substantive legal scope of the Convention, it is not necessary to reflect its content in the Uniform Act.

The Convention also requires Contracting States to provide certain specific information to the Permanent Bureau of the Hague Conference on Private International Law, and this information must be provided by the enacting jurisdictions to Justice Canada for transmission abroad. See Articles 28, 38 and 42.

*Interpretation*

**1. In interpreting the Convention, recourse may be had to the *Explanatory Report on the Hague Convention of 13 January 2000 on the International Protection of Adults*.**

**Comment:** The Explanatory Report was prepared by Paul Lagarde and is available on the Hague Conference website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 1 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.

**[*Inconsistent Acts***

**2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

***Force of law***

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*Option A*

**3. The *Convention on the International Protection of Adults* set out in the Schedule has the force of law in [jurisdiction] on the first day of the month following the expiration of three month after the notification by Canada of a declaration extending the application of the Convention to [jurisdiction] in accordance with subparagraph 57(2)(c) of the Convention.**

*Option B*

**3. The *Convention on the International Protection of Adults* set out in the Schedule has force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in subparagraph 57(2)(c) between the deposit by Canada of its a declaration extending the application of the Convention to a jurisdiction and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

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Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to subparagraph 57(2)(c) of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

***The Convention on the International Protection of Adults set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with subparagraph 57(2)(c) of the Convention.***

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have

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effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

***[Central Authority***

**4. The *[name of authority designated by Canada in consultation with the jurisdiction]* is the Central Authority for *[jurisdiction]* for the purposes of the Convention.]**

**Comment:** In line with Article 28 of the Convention, an enacting jurisdiction will designate or identify the authority that will act as the Central Authority for the purposes of the Convention and Canada will communicate this information to the Permanent Bureau of the Hague Conference on Private International Law.

The Central Authority may be identified in the act. Where the Central Authority has not been identified by a jurisdiction before it adopts its implementing act or where it is liable to change over time, it may be more appropriate for the jurisdiction to identify it in regulations.

Some jurisdictions may choose not to identify the Central Authority in their act or regulations where they may have recourse to other mechanisms to assign authority, such as by orders in council or by simple administrative assignment of responsibilities.

The role of the Central Authority to be designated under the Convention by each province or territory is the key to much of the practical operation of the Convention. Its duties are not described in detail in this Uniform Act, because they are set out in the Convention itself.

***[Minister Responsible for the Administration of the Act***

**5. The Minister of *[Ministry/Department]* is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

***[Regulations***

**6. The *[name of regulation-making authority]* may make regulations for carrying out the purposes of this Act.]**

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**Comment:** Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulations may be thought desirable, or may be necessary under existing law of the enacting jurisdiction, to enable the Minister to delegate some duties under the Convention, facilitate communications and make arrangements with public authorities or other bodies to act under the Convention, or to facilitate the operation of the Convention. Regulation-making powers should be clearly expressed and should be no broader than is necessary.

### *Commencement*

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**7. This Act comes into force on [assent / insert the date of assent to this Act].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [proclamation / the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [insert day on which the Convention applies to jurisdiction].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act,

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therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.

- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule** [*Insert the full text of the Convention. It is available on the treaty depositary's website at:*

[https://treatydatabase.overheid.nl/en/Verdrag/Details/009250/009250\\_Gewaarmerkt\\_0.pdf](https://treatydatabase.overheid.nl/en/Verdrag/Details/009250/009250_Gewaarmerkt_0.pdf)]



**Annex 6**

**Uniform Act to Implement the United Nations Convention on the Assignment of Receivables in International Trade (2019)**

**Comment:** This Uniform Act implements the *United Nations Convention on the Assignment of Receivables in International Trade* which promotes the movement of goods and services across national borders by facilitating increased access to lower-cost credit.

The present Uniform Act is drafted in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (2019). The Uniform Assignment of Receivables in International Trade Act (2007) was withdrawn by the ULCC with the adoption of this Uniform Act.

The authors of the ULCC Pre-implementation Report of August 2005 recommended that implementation of the Convention be accompanied by complementary conforming amendments to the existing provisions of the personal property security acts (PPSA) and the *Civil Code of Québec* governing choice of law rule for priority in intangibles and mobile goods. This is no longer necessary in view of the recommendation of the Working Group on the Assignment of Receivables in International Trade Act, based on intervening developments, to limit the application of the Convention choice of law rule to receivables transactions within its territorial and subject matter scope. The 2005 Pre-Implementation Report also recommended conforming amendments to the PPSAs and Civil Code to bring them into line with the Convention rules on the effects of contractual anti-assignment clauses. While the Working Group supported this recommendation as a desirable general reform, it did not think it was necessary to tie their timing to the implementation of the Convention. For a more detailed explanation of both these points, see the Report of the Working Group.

Articles 23, 35, 36, 37, 39, 40, 41 and 42 of the Convention permit declarations that may be deposited by a Contracting State at the time of ratification, accession, acceptance or approval of the Convention or anytime subsequently. An enacting jurisdiction will have to indicate to Justice Canada whether Canada shall make for that jurisdiction any of the declarations permitted by the Convention. If a declaration authorized by Article 23, 36, 37, 39, 40, 41 or 42 is deposited by Canada in relation to a jurisdiction following the enactment of the implementing legislation, the jurisdiction may amend its act to reflect the content of such a declaration. In addition, any amendment by a jurisdiction of a provision giving effect to a substantive declaration would have to be coordinated with a subsequent declaration.

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Article 35 is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, accession, acceptance or approval or at any time thereafter. The content of Article 35 is reflected in the force of law provision of this Uniform Act.

Paragraph 23(3) allows a state to deposit a declaration to identify any preferential right arising by operation of law that would have priority over the rights of an assignee in insolvency proceedings. The purpose of such a declaration would be to provide greater transparency for other States as to the application of the Convention in Canada.

Article 36 supplies rules for identifying the particular territorial unit in which a person is located within a federal State where, under the rules of the Convention, that person is located in that State. However, States are allowed to specify by declaration other rules for determining the location of a person within that State. For such a declaration, the appropriate reference to the specific legislation of the enacting jurisdiction should be communicated to Justice Canada. The Working Group has recommended that the question of the appropriateness of declarations under this Article be considered by a ULCC Secured Transactions Working Group as part of the larger question of reforming and harmonizing PPSA and Civil Code choice of law rules governing the perfection or publication and priority of security rights in intangibles and mobile goods. An adapted version of any reforms to the existing domestic location rules that emerge from that process could be extended to transactions within the scope of the Convention through the vehicle of a declaration.

Article 37 provides that a reference in the Convention to the law of a State means, in the case of a federal State, the law in force in the relevant territorial unit. For example, Article 22 of the Convention provides that the law of the State where the assignor is located governs issues relating to the priority of the assignee's rights. Applied to a Canadian context, the effect of Article 37 is to clarify that the governing law is the law of the province or territory within Canada in which the assignor is located. However, Article 37 allows a State to specify by declaration at any time other rules for determining the applicable law, including rules that render applicable the law of another territorial unit of that State. As to the appropriateness or desirability of such a declaration, the comments made on the equivalent point in the context of declarations under Article 36 above also apply here.

Article 39 allows States to opt out of the independent conflict of laws regime in Chapter V of the Convention (the Chapter V regime is "independent" in the sense that it supplies the general conflicts regime for assignments of receivables, whether or not the transaction falls

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within the scope of the Convention.) The ULCC Pre-implementation Report of August 2005 recommended that Canada not opt out of Chapter V. However, as a result of the recommendation of the Working Group to limit the choice of law rule for priority in Article 22 of the Convention to receivables transactions within the scope of the Convention, it is now recommended that an opt out declaration be made. Otherwise, the choice of law rule for priority in Chapter V, by virtue of its “independent” application, would apply to assignments of receivables outside the scope of the Convention, contrary to the recommendation of the Working Group to minimize the impact of the Convention choice of law rule on the general PPSA and Civil Code conflicts rules.

Article 40 authorizes a State to declare at any time that it will not be bound by Articles 9 and 10 of the Convention where the debtor on an assigned receivable is a governmental entity or other entity constituted for a public purpose. Articles 9 and 10 render ineffective an anti-assignment clause contained in contracts generating ordinary trade-type receivables. Article 40 was introduced in response to the practice of some States of restricting the assignability of debts owing by the government through the device of a contractual anti-assignment clause, particularly in the procurement context. According to the Working Group, in Canada, as in most States, restrictions on the assignability of government and other public debts are effected through statutory rather than contractual prohibitions or restrictions. Since paragraph 8(3) of the Convention preserves the operation of statutory restrictions on assignments, the Working Group did not foresee a need for a declaration under Article 40. Of course it may be that governmental practices in particular jurisdictions warrant a different conclusion.

Article 41 allows a State at any time to declare that the Convention does not apply to the specific types of assignment or to the assignment of specific categories of receivables described in the declaration. The Working Group was not able to conceive of any examples that warranted such an exclusion.

Article 42 allows a State to declare that it will be bound by one of the three sets of substantive priority rules set out in the Annex to the Convention. For the reasons set out in the ULCC Pre-implementation Report of August 2005, no declaration is recommended.

### *Interpretation*

#### **1. In interpreting the Convention, recourse may be had to:**

- (a) the commentary prepared by the United Nations Commission on International Trade Law with respect to the Convention, *Yearbook of the***

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***United Nations Commission on International Trade Law, 201*, vol. XXXII, (New York: UN, 2003) (Doc. NU A/CN.9/SER.A/2001); and**

**(b) the *Report of the United Nations Commission on International Trade Law on its thirty-fourth session, 25 June-13 July 2001, General Assembly Official Records, Fifty-sixth session, Supplement No. 17 (A/56/17)*.**

**Comment:** At the time of adoption of this Uniform Act by the ULCC, the Commission had not adopted an official commentary for the Convention. Enacting jurisdictions should verify whether an official commentary has been adopted by the Commission and update the reference in clause 1(a) to the corresponding document accordingly.

The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 1 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that other helpful resources will emerge. In particular, over time UNCITRAL's Case Law on UNCITRAL Texts (CLOUT) will provide a useful source for the evolving jurisprudence on the Convention from the courts in all Contracting States.

*[Inconsistent Acts*

**2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

***Force of Law***

*Option A.1 - In cases where Canada has acceded to the Convention and the Convention is already applicable to Canada, jurisdictions can enact:*

**3. The United Nations Convention on the Assignment of Receivables in International Trade set out in the Schedule has force of law in [jurisdiction] on the first day of the month following the expiration of six months after the receipt by the depositary of the Convention of a notification by Canada of a declaration to extend the application of the Convention to [jurisdiction] in accordance with paragraph 43(3) of the Convention.**

*Option A.2 - In all other cases, jurisdictions can enact:*

**3. The United Nations Convention on the Assignment of Receivables in International Trade set out in the Schedule has force of law in [jurisdiction] from the date determined under paragraph 43(3) of the Convention.**

*Option B*

**3. The United Nations Convention on the Assignment of Receivables in International Trade set out in the Schedule has force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction.

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Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two main options with respect to the force of law provision with option A subdivided further into sub-options A.1 and A.2. Each jurisdiction should determine which option is the most appropriate. Because of the possible short period of time set out in Article 43 between the deposit by Canada of a declaration extending the application of the Convention to a jurisdiction and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Sub-option A.1 reproduces in full the mechanism for calculating the date on which the Convention would start applying to the jurisdiction internationally. As indicated above, this sub-option can be selected when, at the time of enactment, Canada has acceded to the Convention and the Convention is already applicable to Canada (i.e. when the depositary will be receiving the notification of the declaration extending the application of the Convention to the enacting jurisdiction after the Convention has become applicable to Canada internationally).

Sub-option A.2 refers to paragraph 43(3) of the Convention. The reader of the Act would need to refer to the text of the Convention to calculate the date on which the Convention would start applying to the jurisdiction internationally. Sub-option A.2 would have to be selected by a jurisdiction that enacts its implementing act before the Convention applies to Canada internationally because the period after which the Convention would apply to the jurisdiction would not be known at the time of enactment. The period is different if a declaration is deposited: (1) before the convention enters into force internationally; (2) with a state's instrument of ratification, accession, acceptance or approval when the Convention is not yet in force internationally; (3) with a state's instrument of ratification, accession, acceptance or approval when the Convention is in force internationally or (4) after the deposit of the state's instrument but before the convention starts applying to it internationally. In any of these situations, it would not be possible to set out the period after which the Convention would apply to the jurisdiction in the force of law provision because

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the time of deposit of a declaration is generally not known at the time of enactment of the act.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of unproclaimed legislation within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have

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effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada officials to coordinate these events.

***[Application of the Convention***

**4. Chapter V of the Convention does not apply in [jurisdiction].]**

**Comment:** The declarations permitted by the Convention are described in the introductory comment. Giving force of law to the Convention gives force of law to its provisions on declarations, which will, in many cases, operate to make the declarations made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty, if a declaration is made by Canada in relation to a jurisdiction under Article 39 of the Convention, it might be advisable to reflect its content in the act, since it narrows the scope of application of the Convention.

***[Minister Responsible for the Administration of the Act***

**5. The Minister of [Ministry/Department] is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

***[Binding on Crown/Government/State***

**6. This Act is binding on the [Crown/Government/State [of jurisdiction].]**

**Comment:** The Convention is drafted on the assumption that it applies to all receivables transactions otherwise within its scope whether or not they involve governmental entities. This is subject to the preservation of statutory limitations on assignability and the special declaratory power with respect to anti-assignment clauses mentioned in the introductory comment. Section 6 merely confirms this.

If a jurisdiction's interpretation legislation already provides that the Crown/Government/State is bound unless otherwise stated in the particular act, there is no need to include this provision.



***Commencement***

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**7. This Act comes into force on [assent / *insert the date of assent to this Act*].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [proclamation / the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [*insert day on which the Convention applies to jurisdiction*].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

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- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule** [*Insert the full text of the Convention. It is available on the treaty depositary's website at: [https://treaties.un.org/doc/Treaties/2001/12/20011212%201-35%20PM/Ch\\_X\\_17p.pdf](https://treaties.un.org/doc/Treaties/2001/12/20011212%201-35%20PM/Ch_X_17p.pdf)*]

**Uniform Act to Implement the 2005 Convention on Choice of Court  
Agreements (2019)**

**Comment:** This Uniform Act implements the *2005 Convention on Choice of Court Agreements*. The Convention helps ensure that courts in Contracting States will recognize choice of court agreements between parties to international commercial transactions and judgments rendered by the chosen court will generally be recognized and enforced in other Contracting States.

The ULCC adopted the Hague Convention on Choice of Court Agreements Act in 2010. The present act updates that act in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (2019). As the act does not bring any substantive changes to the 2010 act, it is addressed at jurisdictions that have not adopted that act. The 2010 act was withdrawn by the ULCC with the adoption of this act.

The act adds to the series of uniform acts implementing international conventions. As well, it constitutes an additional element in the suite of uniform acts dealing with jurisdiction and enforcement of judgments and arbitral awards. That set of uniform acts includes, inter alia: the Uniform Arbitration Act, the Uniform International Commercial Arbitration Act, the Uniform Enforcement of Canadian Judgments Act, the Uniform Enforcement of Canadian Decrees Act, the Uniform Enforcement of Canadian Judgments and Decrees Act, the Uniform Court Jurisdiction and Proceedings Transfer Act and the Uniform Enforcement of Foreign Judgments Act. Those acts address jurisdiction, as well as recognition and enforcement of Canadian and non-Canadian judgments, decrees and arbitral decisions.

In reviewing the draft Uniform Act, legislative drafters expressed a preference for implementation by transposing the Convention rules into legislative provisions. This approach has not been used because it increases the risk of divergence in interpretation and application from that intended by the negotiated Convention language.

As the Explanatory Report indicates, the Convention refers to both civil and commercial matters because “in some legal systems “civil” and “commercial” are regarded as separate and mutually exclusive categories. The use of both terms is helpful for those legal systems. It does no harm with regard to systems in which commercial proceedings are a sub-category of civil proceedings. However, certain matters that clearly fall within the class of civil or

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commercial matters are nevertheless excluded from the scope of the Convention under Article 2.”

The Convention permits Contracting States to make several declarations as described below. An enacting jurisdiction will have to indicate to Justice of Canada whether Canada shall make for that jurisdiction any of the declarations permitted by the Convention. If a declaration is deposited by Canada in relation to a jurisdiction following the enactment of the implementing legislation, the jurisdiction may amend its act to reflect the content of such a declaration. In addition, any amendment by a jurisdiction of a provision giving effect to a substantive declaration would have to be coordinated with a subsequent declaration.

Article 28 is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, acceptance, approval or accession or at any time thereafter. The content of Article 28 is reflected in the force of law provision of this Uniform Act.

Article 19 permits Canada to declare that its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if the only connection between Canada and the parties or the dispute is the selection of Canada as the forum for dispute resolution. Canada need not make this declaration because its courts are already permitted to hear such disputes under domestic law. Moreover, failure to make this declaration will not detrimentally affect Canadian courts as they do not appear to be selected as frequently as the courts of some other jurisdictions and the declaration can be made at any time. The implementing act should thus not contain a provision related to this declaration.

Article 20 permits Canada to declare that its courts may refuse to recognize or enforce a judgment given by a court of another Contracting State if the parties were resident in that state and the relationship of the parties and all other elements relevant to the dispute, other than their choice of court, were connected only with the other Contracting State. Since existing Canadian common and civil law reveals no reluctance to enforce such judgments, and since that position appears to be satisfactory, no declaration is necessary. The implementing act should thus not contain a provision related to this declaration.

Article 21 permits Canada to declare that a province or territory where the Convention is in force by virtue of Article 28 will not apply it to specific matters. Such a declaration should be made with respect to a province or territory which seeks to avoid its courts having to decline jurisdiction in favour of a court chosen by the parties even where its courts would otherwise have exclusive jurisdiction over the matter under local law and where its courts

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would be required to recognize foreign judgments rendered under the Convention but in breach of its courts exclusive jurisdiction. The declaration shall not be broader than necessary and the excluded matters must be clearly and precisely defined. A jurisdiction to which a declaration under Article 21 applies may include a provision in its implementing act which provides the declaration's content.

Article 22 allows Canada to declare that its courts will enforce judgments given by courts of other Contracting States as designated by non-exclusive choice of court agreements, in addition to those designated by exclusive choice of court agreements. Although this declaration may assist with the enforcement of Canadian judgments in foreign states where they would otherwise not be enforced, Canada should not make this declaration since it would require enforcement of judgments without the same safeguards as exist under Canadian law. Jurisdictions should thus not include a provision with respect to Article 22 in their implementing act. *In the context of non-exclusive choice of court agreements, it may be preferable to rely on the UEFJA rather than to oblige Canadian courts to enforce under a Convention designed for exclusive choice of court agreements in a commercial context since the UEFJA provides for greater control over the proper exercise of jurisdiction in the originating forum and assurances of procedural fairness.*

Paragraph 26(5) indicates that this Convention shall not affect the application by Canada of another treaty which, in relation to a specific matter, governs jurisdiction or the recognition or enforcement of judgments, even if it is concluded after this Convention, but only if Canada has made a declaration in respect of the treaty under this article. Since none of Canada's current treaty commitments conflict with the Convention, this declaration is unnecessary. The implementing act should thus not contain a provision related to this declaration.

The title of the act includes the year the Convention was adopted by the Hague Conference on Private International law. This additional information is needed to avoid any confusion with the *1965 Convention on the Choice of Court* which has a similar title to the 2005 Convention in English and an identical title to the 2005 Convention in French.

### *Interpretation*

#### **1. In interpreting the Convention, recourse may be had to the *Explanatory Report on the 2005 Choice of Court Agreements Convention*.**

**Comment:** The Explanatory Report was prepared by Trevor Hartley & Masato Dogauchi and is available on the Hague Conference on Private International Law website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the

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material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 1 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that over time other helpful resources will emerge.

### ***[Inconsistent Acts***

#### **2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

*Force of Law*

*Option A*

**3. The 2005 Convention on Choice of Court Agreements set out in the Schedule has force of law in [jurisdiction] on the first day of the month following the expiration of three months after the notification by Canada of a declaration extending the application of the Convention to [jurisdiction] in accordance with subparagraph 31(2)(b) of the Convention.**

*Option B*

**3. The 2005 Convention on Choice of Court Agreements set out in the Schedule has force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two options with respect to the force of law provision. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in subparagraph 31(2)(b) between the deposit by Canada of a declaration extending the application of the Convention to a jurisdiction and the application of the Convention to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

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Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

The wording of option A can be limited to referring to subparagraph 31(2)(b) of the Convention which prescribes the mechanism for calculating the date on which the Convention starts applying to the jurisdiction internationally:

***The 2005 Convention on Choice of Court Agreements set out in the schedule has force of law in [jurisdiction] from the date determined in accordance with subparagraph 31(2)(b) of the Convention.***

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and



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option B or C of the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

### *[Application of Convention]*

**4. In accordance with Articles 21 and 32 of the Convention, the Convention shall not apply to *[description of matter to which Convention shall not apply].***

**Comment:** The declarations permitted by the Convention are described in the introductory comment. Giving force of law to the Convention gives force of law to its provisions on declarations, which will, in many cases, operate to make the declarations made by Canada effective in internal law. Nonetheless, in the interest of transparency, clarity and legal certainty it might be advisable to reflect their content in the act, especially those that narrow or widen the scope of application of the Convention such as the declaration permitted by Article 21 which narrows the Convention's scope.

### *[Minister Responsible for the Administration of the Act]*

**5. The Minister of *[Ministry/Department]* is responsible for the administration of this Act.**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

### *[Binding on Crown/Government/State]*

**6. This Act is binding on the *[Crown/Government/State [of jurisdiction]].***

**Comment:** The Convention is drafted on the assumption that it applies to all exclusive international choice of court agreements concluded in civil or commercial matters, whether or not they involve governmental entities. Section 6 merely confirms this. As the Explanatory Report notes,

proceedings will fall outside the scope of the Convention if they arise from a choice of court agreement concluded in a matter which is not civil or commercial. Thus, a public authority is entitled to the benefits of the Convention, and assumes its burdens, when engaging in commercial

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transactions [...]. As a general rule, one can say that if a public authority is doing something that an ordinary citizen could do, the case probably involves a civil or commercial matter. If, on the other hand, it is exercising governmental powers that are not enjoyed by ordinary citizens, the case will probably not be civil or commercial.

If a jurisdiction's interpretation legislation already provides that the Crown/Government/State is bound unless otherwise stated in the particular act, there is no need to include this provision.

### ***Commencement***

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**7. This Act comes into force on [assent/insert the date of assent to this Act].**

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [proclamation/the date or dates to be set by the Government].**

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [insert day on which the Convention applies to jurisdiction].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

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- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

- When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision
- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule** [*Insert the full text of the Convention. It is available on the treaty depositary's website at:*

[https://verdragenbank.overheid.nl/en/Verdrag/Details/011343/011343\\_Gewaarmerkt\\_0.pdf](https://verdragenbank.overheid.nl/en/Verdrag/Details/011343/011343_Gewaarmerkt_0.pdf)]

**Uniform Act to Implement the United Nations Convention on the Use of Electronic Communications in International Contracts (2019)**

**Comment:** This Uniform Act implements the *United Nations Convention on the Use of Electronic Communications in International Contracts*. The Convention facilitates the use of electronic communications by answering some frequently asked questions, such as: where are the parties to the contract? How does one deal with a legal requirement that a document be in writing or signed or in original form? What is the nature of an offer made to the world online? When are electronic messages sent and received?

The ULCC adopted the Uniform Electronic Communications Convention Act in 2011. The present act updates that act in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International Convention* (2019). As the act does not bring any substantive changes to the 2011 act, it is addressed at jurisdictions that have not adopted that act. The 2011 act was withdrawn by the ULCC with the adoption of this act.

The Uniform Act adds to the series of uniform acts implementing international conventions. As well, it constitutes an additional element in the suite of uniform acts dealing with electronic communications. That set of uniform acts includes the Uniform Electronic Commerce Act, which implements the *United Nations Model Law on Electronic Commerce*, and the Uniform Electronic Evidence Act.

Articles 18, 19 and 20 of the Convention permit declarations that may be deposited by a Contracting State at the time of ratification, accession, acceptance or approval of the Convention or anytime subsequently. An enacting jurisdiction will have to indicate to Justice Canada whether Canada shall make for that jurisdiction any of the declarations permitted by the Convention.

Article 18 is a standard provision in private international law conventions. It allows federal states to identify by declaration the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification, acceptance, approval or accession or at any time thereafter. The content of Article 18 is reflected in the force of law provision of this Uniform Act.

While each province or territory can technically propose its own declarations under Article 19 and 20, it would be preferable for declarations to be standardized. If a declaration is

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deposited by Canada in relation to a jurisdiction following the enactment of the implementing legislation, the jurisdiction may amend its act to reflect the content of such a declaration. In addition, any amendment by a jurisdiction of a provision giving effect to a substantive declaration would have to be coordinated with a subsequent declaration. The following describes the declarations permitted by Articles 19 and 20 and explains why they are not recommended.

Article 19 allows two declarations. Paragraph 19(1) allows any Contracting States to declare that it will apply the Convention only when the states of both parties are Contracting States, or when the parties have agreed that the Convention will apply. Canada should not make a declaration under paragraph 19(1). The general language of application is satisfactory, and leads to a broader application of the Convention. Similar language is found in the *United Nations Convention on Contracts for the International Sale of Goods* (CISG). Canada originally made such a declaration under the CISG with respect to British Columbia, but later withdrew the declaration when British Columbia changed its implementing statute on the point.

Through the use of paragraph 19(2) of the Convention, Canadian jurisdictions can exclude from its application any of its domestic exceptions, either because they think the exceptions are right in principle for international as well as for domestic transactions, or just to keep the laws applicable to domestic and international transactions consistent. The commercial law exclusions of the Uniform Electronic Commerce Act are pretty accurately covered by the Convention's exclusions. No additional exceptions are needed.

The Convention extends its rules to communications about international contracts governed by other conventions. Article 20 spells out six United Nations conventions that fall into that category: two to which Canada is a party – the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the CISG – and four to which it is not yet a party. Applying the Convention to the interpretation of these conventions says that the use of electronic communications in association with contracts that they govern will be understood as in the Convention. This is a very useful means of encouraging the legally effective use of e-communications. The Convention goes further to apply similarly to international contracts governed by any other international convention to which a Contracting State to the Convention is now or later becomes a party.

The declarations under paragraphs 20(2), (3) and (4) essentially permit Contracting States to have a general rule accepting the Convention's rules for other conventions except as specified, or a general rule rejecting the Convention's rules for other conventions except as specified. In short, a Contracting State may apply the Convention to whatever other conventions it chooses.

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Canadian experience with generally applicable domestic legislation with similar provisions to those of the Convention have not produced any problems in the decade since that legislation was first adopted. There is no reason to fear that allowing similar uses of e-communications for international contracts governed by other conventions will create issues either. Canada should make no declarations under Article 20, so that the Convention will apply to contracts under all other conventions to which Canada is a party – though the number of such conventions affecting international contracts may not be large. Declarations under this article can be made at any time, so if problems arise they can be addressed at that time.

### *Interpretation*

**1. In interpreting the Convention, recourse may be had to the *Explanatory Note on the United Nations Convention on the Use of Electronic Communications in International Contracts* published by the United Nations Commission on International Commercial Law.**

**Comment:** The Explanatory Note was prepared by the UNCITRAL Secretariat and is available on its website. The purpose of this interpretation rule is to ensure that courts and parties will refer to the material set out in the provision before referring to domestic law to interpret the Convention. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 1 is not intended to have the effect of excluding other possible sources for interpretation. It merely indicates the principal source to be used in interpreting the Convention. It is expected that other helpful resources will emerge. In particular, over time UNCITRAL's Case Law on UNCITRAL Texts (CLOUT) will provide a useful source for the evolving jurisprudence on the Convention from the courts in all Contracting States.

*[Inconsistent Acts*

**2. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]**

**Comment:** Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

***Force of Law***

*Option A.1- In cases where Canada has acceded to the Convention and the Convention is already applicable to Canada, jurisdictions can enact:*

**3. The *United Nations Convention on the Use of Electronic Communications in International Contracts* set out in the Schedule has force of law in [jurisdiction] on the first day of the month following the expiration of six months after the receipt by the depositary of the Convention of a notification, by Canada, of a declaration extending the application of the Convention to [jurisdiction] in accordance with paragraph 21(3) of the Convention.**

*Option A.2 - In all other cases, jurisdictions can enact:*

**3. The *United Nations Convention on the Use of Electronic Communications in International Contracts* set out in the Schedule has force of law in [jurisdiction] from the date determined in accordance with paragraph 21(3) of the Convention.**

*Option B*

**3. The *United Nations Convention on the Use of Electronic Communications in International Contracts* set out in the Schedule has force of law in [jurisdiction].**

**Comment:** The force of law provision gives force of law to the entire Convention. Giving force of law only to some articles of the Convention is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction.

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Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Convention should be annexed to the Uniform Act. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Uniform Act offers two main options with respect to the force of law provision with option A subdivided further into sub-options A.1 and A.2. Each jurisdiction should determine which option is the most appropriate. Because of the short period of time set out in paragraph 21(3) between the deposit by Canada of a declaration extending the application of the Convention to the jurisdiction and the application of the Convention at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Sub-option A.1 reproduces in full the mechanism for calculating the date on which the Convention would start applying to the jurisdiction internationally. As indicated above, this sub-option can be selected when, at the time of enactment, Canada has acceded to the Convention and the Convention is already applicable to Canada (i.e. when the depositary will be receiving the notification of the declaration extending the application of the Convention to the enacting jurisdiction after the Convention has become applicable to Canada internationally).

Sub-option A.2 refers to paragraph 21(3) of the Convention. The reader of the Act would need to refer to the text of the Convention to calculate the date on which the Convention would start applying to the jurisdiction internationally. Sub-option A.2 would have to be selected by a jurisdiction that enacts its implementing act before the Convention applies to Canada internationally because the period after which the Convention would apply to the jurisdiction would not be known at the time of enactment. For a declaration deposited before the Convention applies to Canada, the period would be six months from the deposit of the declaration if the declaration accompanies Canada's instrument of accession. For a declaration deposited after the instrument of accession but before the Convention has become applicable to Canada internationally, the time will be the remainder of the six months calculated from the date of deposit of the instrument of accession. For a declaration deposited after the Convention applies to Canada internationally, the period would be six months from the date of the receipt by the depositary of the notification of the declaration.



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Together, option A of the force of law provision and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to the Convention until it applies to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which the Convention applies to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Convention starts applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Convention starts applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Convention. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting option A of both the force of law and the commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Convention has started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Convention starts applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Convention applies could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Convention.

Option B allows a jurisdiction to give force of law to the Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Convention already applies to the jurisdiction at international law. Paired together, option B of this section and option B or C of the commencement provision ensure that the Convention will not have effect in the jurisdiction by legislation before it applies to the jurisdiction at international law.

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Jurisdictions selecting option B must be able to bring their act into force on the day on which the Convention applies to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

***[Minister Responsible for the Administration of the Act***

**4. The Minister of *[Ministry/Department]* is responsible for the administration of this Act.]**

**Comment:** Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

***[Binding on Crown/Government/State***

**5. This Act is binding on the *[Crown/Government/State [of jurisdiction].]***

**Comment:** If a jurisdiction's interpretation legislation already provides that the Crown/Government/State is bound unless otherwise stated in the particular act, there is no need to include a provision stating that it is bound.

***[Regulations***

**6. The *[name of regulation-making authority]* may make regulations for carrying out the purposes of this Act.]**

**Comment:** Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulation-making powers should be clearly expressed and should be no broader than is necessary.

***Commencement***

*Option A – Commencement on assent before the Convention applies to jurisdiction*

**7. This Act comes into force on *[assent/insert the date of assent to this Act].***

*Option B – Commencement on proclamation on day on which the Convention applies to jurisdiction*

**7. This Act comes into force on *[proclamation/the date or dates to be set by the Government].***

*Option C – Commencement on a specified day which is the day on which the Convention applies to jurisdiction*

**7. This Act comes into force on [insert day on which the Convention applies to jurisdiction].**

**Comment:** There is a need to ensure that the Convention has force of law in the implementing jurisdiction when it starts applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with the option A of the force of law provision so that the Convention will only have force of law on the day on which it applies to the jurisdiction at international law.

- Option A combined with option A of the force of law provision avoids the necessity for the federal and provincial or territorial governments to coordinate the application of the Convention to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when the Convention starts applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Convention starts applying to their jurisdiction.
- Under option B, the jurisdiction must proclaim its act on the same day that the Convention applies to the jurisdiction at international law.

When the act commences on proclamation on the date on which the Convention applies to the jurisdiction, option B would be combined with option B of the force of law provision.

- A jurisdiction that adopts this approach faces some risk. If the date on which the Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which the Convention will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Convention will apply to the jurisdiction and the date itself may be too short to issue a proclamation.

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- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of the force of law provision if proclamation is issued before the Convention starts applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Convention applies to the jurisdiction at international law.

- This option would be combined with option B of the force of law provision.
- Enacting jurisdictions adopting the Uniform Act can select this option if the day on which the Convention will apply to their jurisdiction is known at the time of the adoption of the act.

**Schedule:** *[Insert the full text of the Convention. It is available on the treaty depositary's website at: <https://treaties.un.org/doc/Publication/UNTS/Volume%202898/Part/volume-2898-I-50525.pdf>]*