

70A-5-116 Choice of law and forum.

- (1) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 70A-5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.
- (2) Unless Subsection (1) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this Subsection (2).
- (3)
 - (a) Except as otherwise provided in this Subsection (3)(a), the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject.
 - (b) If this chapter would govern the liability of an issuer, nominated person, or adviser under Subsection (1) or (2):
 - (i) the relevant undertaking incorporates rules of custom or practice; and
 - (ii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Subsection 70A-5-103(3).
- (4) If there is conflict between this chapter and Title 70A, Chapter 3, Uniform Commercial Code - Negotiable Instruments, Chapter 4, Uniform Commercial Code - Bank Deposits and Collections, Chapter 4a, Uniform Commercial Code - Funds Transfers, or Chapter 9a, Uniform Commercial Code - Secured Transactions, this chapter governs.
- (5) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with Subsection (1).

Repealed and Re-enacted by Chapter 241, 1997 General Session