

31. CONVENTION ON THE LAW APPLICABLE TO CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS¹

(Concluded 22 December 1986)

The States Parties to the present Convention,
Desiring to unify the choice of law rules relating to contracts for the international sale of goods,
Bearing in mind the *United Nations Convention on contracts for the international sale of goods*,
concluded at Vienna on 11 April 1980,
Have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

This Convention determines the law applicable to contracts of sale of goods –

- a) between parties having their places of business in different States;
- b) in all other cases involving a choice between the laws of different States, unless such a choice arises solely from a stipulation by the parties as to the applicable law, even if accompanied by a choice of court or arbitration.

Article 2

The Convention does not apply to –

- a) sales by way of execution or otherwise by authority of law;
- b) sales of stocks, shares, investment securities, negotiable instruments or money; it does, however, apply to the sale of goods based on documents;
- c) sales of goods bought for personal, family or household use; it does, however, apply if the seller at the time of the conclusion of the contract neither knew nor ought to have known that the goods were bought for any such use.

Article 3

For the purposes of the Convention, "goods" includes –

- a) ships, vessels, boats, hovercraft and aircraft;
- b) electricity.

Article 4

- (1) Contracts for the supply of goods to be manufactured or produced are to be considered contracts of sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

¹ This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions". For the full history of the Convention, see Hague Conference on Private International Law, *Proceedings of the Extraordinary Session (1985) - Diplomatic Conference on the law applicable to sales contracts* (801 pp.).

- (2) Contracts in which the preponderant part of the obligations of the party who furnishes goods consists of the supply of labour or other services are not to be considered contracts of sale.

Article 5

The Convention does not determine the law applicable to –

- a) the capacity of the parties or the consequences of nullity or invalidity of the contract resulting from the incapacity of a party;
- b) the question whether an agent is able to bind a principal, or an organ to bind a company or body corporate or unincorporate;
- c) the transfer of ownership; nevertheless, the issues specifically mentioned in Article 12 are governed by the law applicable to the contract under the Convention;
- d) the effect of the sale in respect of any person other than the parties;
- e) agreements on arbitration or on choice of court, even if such an agreement is embodied in the contract of sale.

Article 6

The law determined under the Convention applies whether or not it is the law of a Contracting State.

CHAPTER II – APPLICABLE LAW

Section 1 – Determination of the applicable law

Article 7

- (1) A contract of sale is governed by the law chosen by the parties. The parties' agreement on this choice must be express or be clearly demonstrated by the terms of the contract and the conduct of the parties, viewed in their entirety. Such a choice may be limited to a part of the contract.
- (2) The parties may at any time agree to subject the contract in whole or in part to a law other than that which previously governed it, whether or not the law previously governing the contract was chosen by the parties. Any change by the parties of the applicable law made after the conclusion of the contract does not prejudice its formal validity or the rights of third parties.

Article 8

- (1) To the extent that the law applicable to a contract of sale has not been chosen by the parties in accordance with Article 7, the contract is governed by the law of the State where the seller has his place of business at the time of conclusion of the contract.
- (2) However, the contract is governed by the law of the State where the buyer has his place of business at the time of conclusion of the contract, if –
 - a) negotiations were conducted, and the contract concluded by and in the presence of the parties, in that State; or
 - b) the contract provides expressly that the seller must perform his obligation to deliver the goods in that State; or
 - c) the contract was concluded on terms determined mainly by the buyer and in response to an invitation directed by the buyer to persons invited to bid (a call for tenders).
- (3) By way of exception, where, in the light of the circumstances as a whole, for instance any business relations between the parties, the contract is manifestly more closely connected with a law which is not the law which would otherwise be applicable to the contract under paragraphs 1 or 2 of this Article, the contract is governed by that other law.
- (4) Paragraph 3 does not apply if, at the time of the conclusion of the contract, the seller and the buyer have their places of business in States having made the reservation under Article 21, paragraph 1, sub-paragraph b).
- (5) Paragraph 3 does not apply in respect of issues regulated in the *United Nations Convention on contracts for the international sale of goods* (Vienna, 11 April 1980) where, at the time of the

conclusion of the contract, the seller and the buyer have their places of business in different States both of which are Parties to that Convention.

Article 9

A sale by auction or on a commodity or other exchange is governed by the law chosen by the parties in accordance with Article 7 to the extent to which the law of the State where the auction takes place or the exchange is located does not prohibit such choice. Failing a choice by the parties, or to the extent that such choice is prohibited, the law of the State where the auction takes place or the exchange is located shall apply.

Article 10

- (1) Issues concerning the existence and material validity of the consent of the parties as to the choice of the applicable law are determined, where the choice satisfies the requirements of Article 7, by the law chosen. If under that law the choice is invalid, the law governing the contract is determined under Article 8.
- (2) The existence and material validity of a contract of sale, or of any term thereof, are determined by the law which under the Convention would govern the contract or term if it were valid.
- (3) Nevertheless, to establish that he did not consent to the choice of law, to the contract itself, or to any term thereof, a party may rely on the law of the State where he has his place of business, if in the circumstances it is not reasonable to determine that issue under the law specified in the preceding paragraphs.

Article 11

- (1) A contract of sale concluded between persons who are in the same State is formally valid if it satisfies the requirements either of the law which governs it under the Convention or of the law of the State where it is concluded.
- (2) A contract of sale concluded between persons who are in different States is formally valid if it satisfies the requirements either of the law which governs it under the Convention or of the law of one of those States.
- (3) Where the contract is concluded by an agent, the State in which the agent acts is the relevant State for the purposes of the preceding paragraphs.
- (4) An act intended to have legal effect relating to an existing or contemplated contract of sale is formally valid if it satisfies the requirements either of the law which under the Convention governs or would govern the contract, or of the law of the State where the act was done.
- (5) The Convention does not apply to the formal validity of a contract of sale where one of the parties to the contract has, at the time of its conclusion, his place of business in a State which has made the reservation provided for in Article 21, paragraph 1, sub-paragraph c).

Section 2 – Scope of the applicable law

Article 12

The law applicable to a contract of sale by virtue of Articles 7, 8 or 9 governs in particular –

- a) interpretation of the contract;
- b) the rights and obligations of the parties and performance of the contract;
- c) the time at which the buyer becomes entitled to the products, fruits and income deriving from the goods;
- d) the time from which the buyer bears the risk with respect to the goods;
- e) the validity and effect as between the parties of clauses reserving title to the goods;
- f) the consequences of non-performance of the contract, including the categories of loss for which compensation may be recovered, but without prejudice to the procedural law of the forum;
- g) the various ways of extinguishing obligations, as well as prescription and limitation of actions;
- h) the consequences of nullity or invalidity of the contract.

Article 13

In the absence of an express clause to the contrary, the law of the State where inspection of the goods takes place applies to the modalities and procedural requirements for such inspection.

CHAPTER III – GENERAL PROVISIONS

Article 14

- (1) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract.
- (2) If a party does not have a place of business, reference is to be made to his habitual residence.

Article 15

In the Convention "law" means the law in force in a State other than its choice of law rules.

Article 16

In the interpretation of the Convention, regard is to be had to its international character and to the need to promote uniformity in its application.

Article 17

The Convention does not prevent the application of those provisions of the law of the forum that must be applied irrespective of the law that otherwise governs the contract.

Article 18

The application of a law determined by the Convention may be refused only where such application would be manifestly incompatible with public policy (*ordre public*).

Article 19

For the purpose of identifying the law applicable under the Convention, where a State comprises several territorial units each of which has its own system of law or its own rules of law in respect of contracts for the sale of goods, any reference to the law of that State is to be construed as referring to the law in force in the territorial unit in question.

Article 20

A State within which different territorial units have their own systems of law or their own rules of law in respect of contracts of sale is not bound to apply the Convention to conflicts between the laws in force in such units.

Article 21

- (1) Any State may, at the time of signature, ratification, acceptance, approval or accession make any of the following reservations –
 - a) that it will not apply the Convention in the cases covered by sub-paragraph b) of Article 1;
 - b) that it will not apply paragraph 3 of Article 8, except where neither party to the contract has his place of business in a State which has made a reservation provided for under this sub-paragraph;

- c) that, for cases where its legislation requires contracts of sale to be concluded in or evidenced by writing, it will not apply the Convention to the formal validity of the contract, where any party has his place of business in its territory at the time of conclusion of the contract;
 - d) that it will not apply sub-paragraph g) of Article 12 in so far as that sub-paragraph relates to prescription and limitation of actions.
- (2) No other reservation shall be permitted.
 - (3) Any Contracting State may at any time withdraw a reservation which it has made; the reservation shall cease to have effect on the first day of the month following the expiration of three months after notification of the withdrawal.

Article 22

- (1) This Convention does not prevail over any convention or other international agreement which has been or may be entered into and which contains provisions determining the law applicable to contracts of sale, provided that such instrument applies only if the seller and buyer have their places of business in States Parties to that instrument.
- (2) This Convention does not prevail over any international convention to which a Contracting State is, or becomes, a Party, regulating the choice of law in regard to any particular category of contracts of sale within the scope of this Convention.

Article 23

This Convention does not prejudice the application –

- a) of the *United Nations Convention on contracts for the international sale of goods* (Vienna, 11 April 1980);
- b) of the *Convention on the limitation period in the international sale of goods* (New York, 14 June 1974), or the *Protocol amending that Convention* (Vienna, 11 April 1980).

Article 24

The Convention applies in a Contracting State to contracts of sale concluded after its entry into force for that State.

CHAPTER IV – FINAL CLAUSES

Article 25

- (1) The Convention is open for signature by all States.
- (2) The Convention is subject to ratification, acceptance or approval by the signatory States.
- (3) The Convention is open for accession by all States which are not signatory States as from the date it is open for signature.
- (4) Instruments of ratification, acceptance, approval and accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 26

- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
- (2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- (3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 27

- (1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the fifth instrument of ratification, acceptance, approval or accession referred to in Article 25.
- (2) Thereafter the Convention shall enter into force –
 - a) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - b) for a territorial unit to which the Convention has been extended in conformity with Article 26 on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 28

For each State Party to the *Convention on the law applicable to international sales of goods*, done at The Hague on 15 June 1955, which has consented to be bound by this Convention and for which this Convention is in force, this Convention shall replace the said Convention of 1955.

Article 29

Any State which becomes a Party to this Convention after the entry into force of an instrument revising it shall be considered to be a Party to the Convention as revised.

Article 30

- (1) A State Party to this Convention may denounce it by a notification in writing addressed to the depositary.
- (2) The denunciation takes effect on the first day of the month following the expiration of three months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 31

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have signed, ratified, accepted, approved or acceded in accordance with Article 25, of the following –

- a) the signatures and ratifications, acceptances, approvals and accessions referred to in Article 25;
- b) the date on which the Convention enters into force in accordance with Article 27;
- c) the declarations referred to in Article 26;
- d) the reservations and the withdrawals of reservations referred to in Article 21;
- e) the denunciations referred to in Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 22nd day of December, 1986, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law as of the date of its Extraordinary Session of October 1985, and to each State which participated in that Session.