UN Convention on Contracts for the International Sale of Goods (CISG)

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A Practice Note containing an overview of the issues to consider when determining whether the UN Convention on Contracts for the International Sale of Goods (CISG) applies and, if it does, whether and how to opt out of the CISG. The Note also includes a summary comparison of the CISG and the Uniform Commercial Code (UCC).

The UN Convention on Contracts for the International Sale of Goods (www.practicallaw.com/6-503-3686) (CISG) is a treaty that was developed by the United Nations Commission on International Trade Law (www.practicallaw.com/9-107-7452) (UNCITRAL) and adopted by the US and most of its major trading partners. The CISG sets out rules for contract formation and the rights and obligations of buyers and sellers of goods, but only applies to the sale of commercial goods and does not generally apply to the sale of services. The CISG automatically becomes the substantive law governing sales contracts between parties residing in the US and any other signatory country of the CISG (see Box, List of CISG Contracting States). However, parties to a covered transaction can expressly exclude or vary the CISG’s application in the applicable contract.

This Note discusses:
- The circumstances under which the treaty applies.
- The consequences of its application, including the differences between the CISG and Article 2 of the Uniform Commercial Code (www.practicallaw.com/1-382-3891) (UCC).
- How to draft a choice of law provision opting out of the CISG.

WHAT IS THE CISG?

The CISG is akin to Article 2 of the UCC (which applies to domestic sales contracts). Both the CISG and the UCC codify the default rules governing many (but not all) of the important issues concerning sale of goods contracts. For example:
- Each covers core issues like formation and performance of a sale of goods contract.
- Neither covers the sale of services. For more information about the sale of services, see Standard Document, Professional Services Agreement (www.practicallaw.com/9-500-2928).
- Neither covers issues concerning the relationship between a seller of goods and its sales representatives. For more information about sales representatives, see Standard Document, Sales Representative Agreement (Pro-supplier) (www.practicallaw.com/8-520-0740).

The CISG does not preempt private contracts between parties; rather, it:
- Fills gaps in certain areas not addressed by the contract.
- Provides an avenue for resolution in the event a dispute arises under the parties’ contract.

DETERMINING WHETHER THE CISG APPLIES

The CISG governs only contracts for the international sale of goods between parties whose places of business are in countries that have ratified or adopted the treaty (known as contracting states). Specifically, the CISG only applies if the sale:
- Is “international” (see International Sale).
- Primarily involves the sale of goods for commercial purposes (see Sale of Goods).
International Sale
An international sale involves parties whose places of business are in different contracting states (CISG art. 1). If a party has more than one place of business, the relevant place of business for purposes of determining whether the CISG applies is the location that has the closest relationship to the contract and its performance (CISG art. 10).

When determining the relevant place of business, the parties should consider the location:
- Of the seller’s agent or sales representative.
- Where the goods will be shipped from.
- Where the goods will be delivered to.

Sale of Goods
The CISG applies only to contracts for the sale of commercial goods, including contracts for the supply of goods to be manufactured “unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production” (CISG art. 3). The CISG does not apply to contracts for the sale of:
- Consumer goods (such as those used for personal, family or household purposes) (CISG art. 2).
- Services (CISG art. 3).

The CISG also applies to contracts covering the sale of a combination of goods and services unless the predominant obligation of the seller is to provide labor or other services (CISG art. 3).

Key Differences Between the CISG and the UCC
There are a number of significant differences between the CISG and Article 2 of the UCC regarding:
- The time for accepting an offer (see Time for Accepting an Offer).
- The revocability of an offer (see Revocability of an Offer).
- The “battle of the forms” (see Battle of the Forms).
- The writing requirement (see Writing Requirement).
- The parol evidence rule (see Parol Evidence Rule).

Time for Accepting an Offer
Under the UCC, when an offer is accepted by mail, the offer is deemed accepted upon the mailing of the acceptance (UCC § 2-206). However, under the CISG:
- An acceptance must be received within the time stated in the offer.
- The time within which the offer must be accepted begins to run when the offeree receives the offer (CISG art. 20).
- Acceptance of the offer is only effective when it is received by the offeror.
(CISG art. 18.)

Specification of Price
Under the UCC, an offer that is missing the price term provides a sufficient basis on which to form a contract (UCC § 2-305). However, under the CISG, an offer is not sufficiently definite unless it expressly or implicitly fixes or makes provisions for determining the quantity and price (CISG art. 14).

Revocability of an Offer
Under the UCC, an irrevocable offer must be in a signed writing that:
- By its terms assures that the offer will be held open during the time stated.
- If no time is stated, assures that the offer will be held open for a reasonable time.
- Remains irrevocable for no more than three months no matter what the writing states.
(UCC § 2-205.)

Under the CISG, an offer becomes irrevocable if:
- It indicates a fixed time for acceptance.
- It indicates that it is irrevocable.
- The offeree reasonably relied on the offer as being irrevocable and acts in reliance on it.
(CISG art. 16.)

Battle of the Forms
Under the UCC, an expression of acceptance is effective unless the acceptance states that it is conditioned on the offeror consenting to additional or different terms contained in the acceptance. The additional terms are to be construed as proposals for additions to the contract (UCC § 2-207). Under the CISG, a reply to an offer that purports to be an acceptance but has terms that materially alter the terms of the offer is deemed rejected or a counteroffer (CISG art. 19).

Writing Requirement
The UCC codifies the statute of frauds and provides that any contract for the sale of goods priced at $500 or more must be evidenced in writing (UCC § 2-201). There is no CISG requirement that contracts must be in writing (CISG art. 11).

Parol Evidence Rule
Under the UCC, evidence of terms discussed in negotiations before a writing was executed will not be admitted into evidence (UCC § 2-202).

There is no parol evidence rule under the CISG. Evidence may be introduced:
- Of terms discussed in negotiation before a writing was executed, even if they contradict the written contract.
- That shows a party’s subjective intent so long as the other party knew or could have known of that intent.
(CISG art. 8.)
DECIDING WHETHER TO OPT OUT OF THE CISG

Parties may choose to opt out of the CISG. Parties who opt out of the CISG may choose to opt out of:

- The CISG entirely.
- Merely one or more provisions of the CISG.

(CISG art. 6.)

When deciding whether to opt out of the CISG, the parties should consider the substantive differences between the UCC and the CISG (see Key Differences between the CISG and the Uniform Commercial Code). If the parties want to opt out of the CISG, they must state so specifically and unequivocally in the contract (see Drafting Choice of Law Opt-out Language).

DRAFTING CHOICE OF LAW OPT-OUT LANGUAGE

Parties entering into a contract for the international sale of goods cannot successfully opt out of the CISG merely by including a choice of law provision in their contract. Instead, they must specifically and unequivocally state in the contract that they do not wish to be bound by the CISG. Even if both parties desire to opt out of the CISG, if they do not include specific opt-out language in the contract, the CISG will apply. For an example of choice of law language opting out of the CISG, see Standard Clause, General Contract Clauses: Choice of Law: Drafting Note, United Nations Convention on Contracts for the International Sale of Goods (CISG) (www.practicallaw.com/9-508-1609).

LIST OF CISG CONTRACTING STATES

There are 78 contracting states, including:

- Albania.
- Argentina.
- Armenia.
- Australia.
- Austria.
- Belarus.
- Belgium.
- Benin.
- Bosnia and Herzegovina.
- Bulgaria.
- Burundi.
- Canada.
- Chile.
- China.
- Columbia.
- Croatia.
- Cuba.
- Cyprus.
- Czech Republic.
- Denmark.
- Dominican Republic.
- Ecuador.
- Egypt.
- El Salvador.
- Estonia.
- Finland.
- France.
- Gabon.
- Georgia.
- Germany.
- Greece.
- Guinea.
- Honduras.
- Hungary.
- Iceland.
- Iraq.
- Israel.
- Italy.
- Japan.
- Kyrgyzstan.
- Latvia.
- Lebanon.
- Lesotho.
- Liberia.
- Lithuania.
- Luxembourg.
- Macedonia.
- Mauritania.
- Mexico.
- Mongolia.
- Montenegro.
- Netherlands.
- New Zealand.
- Norway.
- Paraguay.
- Peru.
- Poland.
- Republic of Korea.
- Republic of Moldova.
LIST OF CISG CONTRACTING STATES

- Romania.
- Russian Federation.
- San Marino.
- Serbia.
- Singapore.
- Slovakia.
- Slovenia.
- Spain.
- St. Vincent and the Grenadines.
- Sweden.
- Switzerland.
- Syria.
- Turkey.
- Uganda.
- Ukraine.
- United States.
- Uruguay.
- Uzbekistan.
- Zambia.

For the links to the documents referenced in this note, please visit our online version at http://us.practicallaw.com/2-523-2126.