

## Legal Alert

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### Selling Goods Internationally

How do I make sure that we get paid when the sales department is selling stuff halfway around the world? Learn how to use the United Nations Convention on Contracts for the International Sale of Goods!

Selling products to customers in foreign countries can be scary! After all, you probably don't know anything about the laws in the foreign country, let alone the customs and trade practices. How do you know if you even have an enforceable contract? What law will apply if there is a problem or dispute?

Fortunately, the United Nations Convention on Contracts for the International Sale of Goods was adopted in 1980. (We will just call it "the Convention" in this article.) According to Professor Harry M. Flechtner, the Convention has been adopted by more than seventy countries and thus applies to much more than two-thirds of all international sales of goods.

Therefore, the law governing the international sale of goods will often be the Convention. If you are accustomed to selling goods in the United States, you will find that the Convention is comfortably similar to Article 2 of the Uniform Commercial Code, dealing with the sale of goods.

So how do I know that the Convention applies to my transaction?

First, you need to determine whether all countries involved in your transaction have adopted the Convention. Second, you need to determine if any of the countries have made any substantial changes or "reservations" to the Convention. Third, you need to make sure that the Convention applies to the type of transaction you contemplate.

The Convention does not apply to sales of goods for personal, family or household uses, unless the seller knew about those uses at the time of sale. The Convention also does not apply to goods sold at auction, or goods sold upon execution or other legal sales. The Convention does not apply to sales of stocks, similar investment securities, or money. Moreover, the Convention does not apply to sales of ships, vessels, aircraft or hovercraft. Interestingly, the Convention does not apply to the sale of electricity, either.

Other than those exceptions, the Convention applies to contracts to sell goods between parties in different countries, if the countries of both parties have adopted the Convention.

Can we get out of an international sale if the buyer looks shaky?

Some of the more useful and interesting provisions of the Convention deal with the ability to suspend performance of a contract. For example, a party may suspend performance of a contract if it becomes apparent that the other party won't be able to perform.

If your company is ready to sell goods and the buyer now appears to be insolvent, your company may be able to cancel delivery of any goods. And if your sales people on the other side of the world tell you that your customer is not getting ready to take delivery and pay you, you can refuse to ship the goods. In fact, if you have already shipped the goods before you found out that the buyer was shaky, you can "prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them."

If your company suspends performance, you must immediately give notice of the suspension of performance to the buyer. Also, your company must continue with performance if the other party provides adequate assurance of its performance.

We are accustomed to the seller refusing to ship or stopping the shipment of goods to an uncredit-worthy buyer. But the Convention also allows a buyer to cancel the contract, if the seller does not appear capable of delivering the goods.

Can we get out of installment sales if the other side either fails to pay or fails to deliver?

If goods are to be delivered in installments, then a failure of either party to fulfill its obligations as to any single installment constitutes a fundamental breach of contract entitling the other party to declare the contract "avoided." So if the seller fails to deliver, the contract can be avoided. And if the buyer fails to pay, the contract can be avoided.

Your company probably needs to figure out how to successfully do business in foreign countries!

You don't want to venture significant resources into foreign domains without adequate legal preparation. Our clients do hundreds of millions of dollars of business in foreign countries with our assistance. Please let me know if we can be of assistance to your company.