



# PARLIAMENT OF THE REPUBLIC OF FIJI

---

## STANDING COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE

### THE REPORT ON THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS



**Parliamentary Paper No. 54 of 2017**

*March 2017*

---

*Published and Printed by the Department of Legislature, Parliament House, SUVA*

## Table of Contents

<b>CHAIR’S FOREWARD .....</b>	<b>iii</b>
<b>LIST OF ACRONYMS .....</b>	<b>iv-v</b>
<b>RECOMMENDATION .....</b>	<b>vi</b>
<b>1.0 INTRODUCTION .....</b>	<b>1</b>
1.1 The Standing Committee on Foreign Affairs and Defence	
1.2 Committee Members	
1.3 Procedure and Program	
<b>2.0 UNITED NATIOND CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS .....</b>	<b>2</b>
2.1 Background	
2.2 Purpose	
2.3 Why is it relevant?	
2.4 Key Provisions	
2.5 Relation to private international law and the existing domestics law .....	<b>3</b>
2.6 Related Instrument	
2.6.1 The Passing of Risk	
2.6.2 INCOTERMS	
2.6.3 Obligation of the Seller	
2.6.4 Obligation of the Buyer .....	<b>4</b>
<b>3.0 COMMITTEE’S OBSERVATIONS AND AREA OF CONCERN .....</b>	<b>5</b>
3.1 Stakeholders Observations	
3.2 Gender Equality	
3.3 General Observations	
3.3.1 Positive Aspects of the Convention to Fiji .....	<b>6</b>
3.3.2 Challengers	
<b>4.0 CONCLUSION .....</b>	<b>7</b>
<hr/>	
<b>APPENDICES</b>	
<b>APPENDIX 1</b> -Article, Summary & Research Documents	
<b>APPENDIX 2</b> -Oral Submissions	
<b>APPENDIX 3</b> -Written Submissions	

# CHAIR'S FOREWORD

I am pleased to present the report of the Standing Committee on Foreign Affairs and Defence (SCFAD), which was assigned to review and examine the **United Nations Convention on Contracts for the International Sale of Goods** (UN Convention on CISG).

This report provides a summary and examination of written and oral submissions received at the Committee public hearings in Parliament commencing from 14<sup>th</sup> February 2017.

The report is divided into four parts:

**Part 1** covers the **role and responsibilities** of the Standing Committee and the inquiry process in undertaking a review of the Convention.

**Part 2** provides a **brief overview** of the Convention.

**Part 3** details the Standing **Committee's observations** and Convention.

**Part 4** provides a **conclusion** of the report.

The Constitution of the Republic of Fiji 2013 Section 70 and the Standing Orders of the Parliament of the Republic of Fiji Chapter 10, Clause 109(2)(c) and Clause 11(1)(c) stipulates the role and functions of Parliamentary Standing Committees. One of the functions of the Standing Committees as stipulated in Standing Orders 110(e) is to review International Treaties and Conventions ratified by the Government and monitor their implementation.

The Committee has conducted its inquiry as required of it by Parliament and this included hearing submissions from and consulting with a wide range of stakeholder organisations and individuals from the private and public sectors. The SCFAD received public submissions in the Parliament precincts.

The Committee is of the view that the Convention will provide benefits for traders in developing countries like Fiji especially in Small and Medium Enterprises (SMEs) and also improve investors' confidence.

The Committee also noted concerns from private sector organisations that key Government agencies need to consult more with all stakeholders in regards to this Convention.

The Committee recommends that Fiji ratifies the United Nations Convention on Contracts for the International Sale of Goods.

I commend this committee report to Parliament for its consideration.

**Hon. Netani B. Rika**  
**Chairman**

# LIST OF ACRONYMS

<b>BAF</b>	-	Biosecurity Authority of Fiji
<b>CFR</b>	-	Cost and Freight
<b>CIF</b>	-	Cost, Insurance and Freight
<b>CPT</b>	-	Carriage Paid to
<b>DAF</b>	-	Delivered At Frontier
<b>DDP</b>	-	Delivered Duty Paid
<b>DDU</b>	-	Delivered Duty Unpaid
<b>DHL</b>	-	Deutsche Post DHL (The Mail & Logistics Group)
<b>DEQ</b>	-	Delivered Ex Quay
<b>EXW</b>	-	Ex Works
<b>FAS</b>	-	Free Along Ship
<b>FCA</b>	-	Free Carrier
<b>FCC</b>		Fiji Chamber of Commerce
<b>FDI</b>	-	Foreign Direct Investment
<b>FOB</b>	-	Free on Board
<b>FCRA</b>	-	Fiji Customs Revenue Authority
<b>ICC</b>	-	International Chamber of Commerce
<b>ICT</b>	-	Information Communications Technology
<b>INCOTERMS</b>	-	International Commercial Terms
<b>LDCs</b>	-	Least Developed Countries
<b>MSME's</b>	-	Micro Small-Medium Enterprises
<b>SCFAD</b>	-	Standing Committee on Foreign Affairs and Defence
<b>SME's</b>	-	Small and Medium Enterprise

- SO** - Standing Orders
- UN Convention on CISG** - United Nations Convention on Contracts for the International Sale of Goods
- UNCITRAL** - United Nations Commission on International Trade Law
- UNMLEC** - United Nations Model Laws on Electronic Commerce

# **RECOMMENDATION:**

## **The Committee recommends that:**

Fiji ratifies the United Nations Convention on Contracts for the International Sale of Goods.

# 1.0 INTRODUCTION

The Parliament Standing Committee on Foreign Affairs and Defence (SCFAD) undertook a review of the proposal by the Government of the Republic of Fiji to accede to the United Nations Convention on Contract for the International Sale of Goods.

## 1.1 The Standing Committee on Foreign Affairs and Defence

The Standing Committee is established under Standing Orders 109(2)(e) of the Parliament of the Republic of Fiji. It is mandated to look into matters related to Fiji's relations with other countries, development aid, foreign direct investment, oversight of the military and relations with multi-lateral organisations.

Under SO 110(1)(e) the Committee is also tasked with reviewing international treaties and conventions ratified by the Government and monitor their implementation.

The Committee comprises five Honourable Members drawn from both sides of the House in a bi-partisan manner.

## 1.2 Committee Members

The members of the Standing Committee on Foreign Affairs and Defence are:

- Hon. Netani Rika (Chairman)
- Hon. Mataiasi Niumataiwalu
- Hon. Alexander O'Connor
- Hon. Mosese Bulitavu
- Hon. Ratu Suliano Matanitobua

During the Standing Committee's meetings, the following alternate membership arose pursuant to Standing Order 115(5):

- Hon. Jilila Kumar
- Hon. Salote Radrodoro

## 1.3 Procedure and Program

The Committee placed advertisements in the *Fiji Sun* and *Fiji Times* from the 18<sup>th</sup> to 21<sup>st</sup> of February 2017. The advertisement was also placed on the Parliament website: ([www.parliament.gov.fj](http://www.parliament.gov.fj)).

The Committee received oral submissions on the Convention in the Parliament complex which were open to the public between 21<sup>st</sup> February and to the 2<sup>nd</sup> March 2017.

# 2.0 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

## 2.1 Background

On 9<sup>th</sup> February 2017, the Treaty on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) was referred by Parliament to the SCFAD for its deliberation.

Under section 51 of the Constitution, “an international treaty or convention binds the State only after it has been approved by Parliament.”

## 2.2 Purpose

The main purpose of the Convention is to provide a modern, uniform and fair text of law for contracts for the international sale of goods, reduce barriers in international trade and promote the use and development of international trade. Thus, it contributes significantly to introducing certainty in commercial exchanges, decrease transaction costs, and facilitate the ease of trading across the borders.

## 2.3 Why is it relevant?

The contract of sale is the backbone of international trade in all countries, irrespective of their legal tradition or level of economic development. The CISG is therefore considered one of the core international trade law conventions whose universal adoption is desirable.<sup>1</sup>

## 2.4 Key Provisions

The CISG governs contracts for the international sales of goods between private businesses, excluding sales to consumers and sales of services, as well as certain specified types of goods. It applies to contracts for sale of goods between whose places of business are in different contracting states, or when rules of private international law lead to the application of law of a Contracting State.<sup>2</sup>

---

<sup>1</sup> ibid

<sup>2</sup> ibid



## **2.5 Relation to private international law and existing domestic law**

The CISG applies only to international transactions and avoids the recourse to rules of private international law for those contracts falling under its scope of application. International contracts falling outside the scope of application of the CISG, as well as contracts subject to a valid choice of other law, would not be affected by the CISG. *Purely domestic sale of contracts are not affected by the CISG and remain regulated by domestic law.*<sup>3</sup>

## **2.6 Related Instruments**

### **2.6.1 The Passing of the Risk**

**2.6.1.1** Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate the issue in their contract either by an express provision or by the use of a trade term such as for example INCOTERM. The effect of the choice of such a term would be to amend the corresponding provisions of the CISG accordingly. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rule.

**2.6.1.2** The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit. In all other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery, whichever comes first.

### **2.6.2 INCOTERMS**

**2.6.2.1** Incoterms are trade terms published by the International Chamber of Commerce (ICC) that are commonly used in both international and domestic trade contracts. Incoterms which is short for “International Commercial terms,” are used to make international trade easier by helping traders who are in different countries to understand one another.

**2.6.2.2** Trade terms used in different countries may appear identical on the surface, but they actually have different meanings as they are used domestically. Incoterms are actually recognized and prevent confusion in terms of foreign trade contracts by helping sellers and buyers understand their obligations in any transaction.

### **2.6.3 Obligation of the Seller**

**2.6.3.1** The general obligation of the seller are to deliver the goods, handover any documents relating to them and transfer the property in the goods, as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to when, where and how the seller must perform these obligations.

---

<sup>3</sup> ibid

## **2.6.4 Obligation of the Buyer**

**2.6.4.1** The general obligations of the buyer are to pay the price for the goods and take delivery of them as required by the contract and the Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligations to pay the price.

## 3.0 COMMITTEE'S OBSERVATIONS AND AREAS OF CONCERN

### 3.1 Stakeholders Observations

- 3.1.1 Submissions were received from relevant stakeholders on the Convention and it was recommended that Parliament should ratify the Convention given the right to the accession to the Convention. Stakeholders believe the Convention is relevant to Fiji given the current stage of economic development where the Convention clearly complements trade liberalization strategies which promotes Foreign Direct Investment (FDI), protects rights of local businesses and improve tax administration in the sense that there will be a standard tax charge to the exporting items across the border.
- 3.1.2 Stakeholders also feel before Fiji adopts the Convention, it is highly appreciated that a **single window approach** in cross border trading is established. Single window approach is a trade facilitation idea where its implementation will enable cross-border traders to submit regulatory documents at a single location and/or single entity. Such documents are typically customs declarations, application for import, export permits and other supporting documents such as certificates of origin and trading invoices.
- 3.1.3 The main value proposing for having single window for a country or economy is to increase efficiency through time and cost saving for traders in their dealings with government authorities in obtaining the relevant clearance and permit(s) for moving cargoes across national or economic borders.

### 3.2 Gender Equality

The Parliament of Fiji Standing Orders 110(2) requires a committee to give full consideration to the principle of gender equality to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

The Committee is satisfied that the matters considered in this report will impact both women and men equally.

### 3.3 General Observation

#### 3.3.1 Positive Aspects of the Convention to Fiji

- Benefits for traders in developing countries, especially small and medium enterprises (SMEs).
- The Convention reduces barriers in international trade, promotes the use and development of international trade, contributes significantly to introducing certainty in commercial exchanges, decreases transaction costs and facilitates the ease of trading across borders.

- The administration of the Convention will allow for a standard set of rules to apply to contracts.
- The Convention is ‘written in plain business language’ which allows Courts to apply the Convention in numerous situations.
- Allows for State parties to have an equal and fair system for the settlement of disputes relating to the international sale of goods.
- The Convention provides for international best practices and standards in relation to International trade.

### 3.3.2 Challenges

- There are no negative aspects of the Convention however, there should be a wider consultation and awareness for Fijian businesses to familiarise themselves with the Convention.
- The Ministry of Industry, Trade and Tourism with the National Micro Small-Medium Enterprise Council and the support of the Solicitor General’s Office should undertake awareness in partnership with the Fiji Chamber of Commerce to ensure our traders are aware of rules and regulations available under the Convention.

## **4.0 CONCLUSION**

The Committee is of the view that the ratification of the Convention will ensure Fiji's laws and practices regarding the international sale of goods to be in line with international standards. The Convention will promote certainty and predictability, which are important to raising and maintaining investor confidence.

The Committee has put forward observations and recommendation to Parliament for the ratification of the Convention.

# **APPENDICES**

# **APPENDIX 1**

## **CONSIDERATION OF CONVENTION ARTICLE BY ARTICLE, SUMMARY & RESEARCH DOCUMENTS.**

1. UN Convention on CISG Article by Article
2. Summary of the Convention
3. Abstracts in cases relating to CISG
4. INCOTERMS

# **APPENDIX 2**

## **ORAL SUBMISSIONS**

- 1. Ministry of Industry, Trade and Tourism**
- 2. Ministry of Foreign Affairs**
- 3. Fiji Revenue & Customs Authority**
- 4. Fiji Ports Corporation Limited/ Fiji Terminal Corporation Limited**
- 5. Biosecurity Authority Limited**
- 6. DHL Express Limited**



# **APPENDIX 3**

## **WRITTEN SUBMISSIONS**

1. Fiji Chamber of Commerce Comments and Summary
2. Consumer Council of Fiji
3. DHL Express Fiji