

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

1.0 Summary of the Convention

- 1.1 The Convention was prepared by the United Nations Commission on International Trade Law and adopted on 11 April 1980. It came into force on 1 January 1988. The Convention has currently 85 member States.
- 1.2 The 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. The Convention thus, contributes significantly to introducing certainty in commercial exchanges, decreasing transaction costs and facilitates the ease of trading across borders.
- 1.3 The Convention governs the international sale of goods between private businesses, excluding sales to consumers, sales of services and sales of specified types of goods.
- 1.4 The Convention consists of 101 articles which are divided into four parts. Part I contains articles 1 to 13 dealing with the scope and application of the Convention and the general provisions. The articles pertaining to the scope of application indicate both what is covered by the Convention and what is not covered. Part I provides that the Convention applies to contracts for the sale of goods between parties whose places of business are in different contracting States, or when the rules of private international law lead to the application of the law of a contracting State.
- 1.5 Part II is made up of articles 14 to 24 containing the rules governing the formation of contracts for the international sale of goods. It deals with a number

of questions that arise in the formation of the contract by the exchange of an offer and an acceptance.

- 1.6 Part III deals with the substantive rights and obligations of the buyer and seller arising from the contract. Part III consists of articles 25 to 88. According to Part III, the general obligations of the seller are to deliver the goods, hand over documents relating to them and transfer the property in the goods, as required by the contract and the Convention. It also provides rules pertaining to the seller's obligations in respect of the quality of the goods.
- 1.7 Under Part III of the Convention, the general obligations of the buyer are to pay the price of the goods and take delivery of them as required by the contract and the Convention. Part III also provides rules relating to the determination of prices of goods when the price is not provided in the contract. Common rules regarding remedies for breach of contract are also stipulated in Part III.
- 1.8 Part IV contains the final clauses of the Convention dealing with procedural matters such as how and when it comes into force, the reservations and declarations that are permitted under the Convention and the application of the Convention to the international sales where States concerned have the same or similar law on the subject. Part IV contains articles 89 to 101.

2.0 Requirements for Implementation

- 2.1 According to article 91(4) of the Convention, to become a party to the Convention, Fiji has to deposit its instrument of accession with the Secretary-General of the United Nations.
- 2.2 Moreover, according to article 99, the Convention will enter into force with respect to Fiji on the first day of the month following the expiration of twelve months after the date of deposit.

3.0 Impact of the Convention on Fiji

3.1 Accession to the Convention will provide the following benefits to Fiji—

- (i) the Convention will apply to contracts for the sale of international goods, which will be a uniform approach to the application of private international law;
- (ii) the Convention will avoid disputes particularly during the negotiating phase on the choice of law applicable to the contract of sale;
- (iii) the Convention allows for States parties to have an equal and fair system for the settlement of disputes relating to the international sale of goods;
- (iv) the Convention provides for international best practices and standards in relation to international trade; and
- (v) the Convention strengthens cooperation and encourages international trade between States parties to the Convention.

3.2 The above will give enormous confidence to foreign investors and traders to enter into commercial arrangements with Fijian based businesses.

3.3 Once the Convention comes into force in Fiji, the following would apply, unless otherwise agreed to by the parties:

- (i) all contracts for the international sale of goods concluded between a party having its place of business in Fiji and a party having its place of business in another contracting State will fall under the scope of application of the Convention; and

(ii) all contracts for international sale of goods concluded between a party having its place of business in Fiji and a party having its place of business in a non-contracting State will fall under the scope of application of the Convention when the rules on conflict of laws require the application of the law of Fiji (or of another contracting State).

3.4 Becoming a party to the Convention has no financial implications for member States. The administration of the Convention in Fiji does not require any dedicated body nor does it prescribe mandatory reporting requirements.

3.5 Following accession to the Convention, amendments will be required to the Sale of Goods Act 1979 (**Act**) to ensure that it complements the Convention. It is important to note however, that domestic sale contracts will not be affected by the Convention and they will continue to be regulated by the current provisions of the Act.