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## United Nations Convention on Contracts for the International Sale of Goods

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### Abstract

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a treaty on international sales and good law that came into effect on 1 January 1988 and has been ratified by 89 states in 18 countries as signatories, but Malaysia has not ratified it this convention. This paper looks at why Malaysia should ratify the CIGS and how to remove the legal hurdle. If Malaysia is not a CIGS member, the customer protection issue and other opportunities with contracting states will be overwhelming. This study also argues that if Malaysia is a member of the CISG, the Malaysian language trader will generally remain at the same level as their counterparts in business dealings.

**Keywords:** Jurisdiction, Goods

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### Introduction

1980 (CISG) applies between two countries where the places of business differ from country to country. Freedom of contract is then considered a fundamental principle of this convention, and contracting parties can change the effects of its provisions [1]. The aim of this CISG is to provide a uniform current and fair regime for contracts in the transnational sale of goods, which significantly contributes to the presentation on the trade exchange and the reduction of trade prices [2]. Another purpose is a different legal system, social, economic with the progressive development of international trade and the removal of legal barriers. However, the contract of sale is a pillar of international trade for all countries. The CISG is then considered one of the central conventions of international commercial law, where worldwide implementation is required. In contrast, according to Wu Min Aun [3]

"SGA 1957 does not provide a complete law and operates against a background of contract law not inconsistent with its express provisions."

However, this paper will deal with the distinction between Malaysian law and the CISG with important questions for joining the CISG and whether Malaysia should accede to the CISG and why Malaysia will be required to consolidate in this treaty.

## 2. What is the difference between the Malaysian Sales of Goods Act 1957 and the 1980 Act (ciscg)

### 2.1 Difference in functions

Malaysian Sales and Law provides 64 articles with a total of 7 chapters, but 101 articles are discussed in the CISG including 4 parts. Most of the chapters in Malaysia were related to contact of sale, implied terms, transfer of property, international sale, but the legal issue of Malaysian sales law is mostly problematic. According to Ahmed Masum et al. [4]

"Statutory Remedies in the Sale of Goods Act 1957 (SOGA 1957) and the Consumer Protection Act 1999 (CPA 1999) .....

These statutory remedies in the Acts appear to be somewhat confusing and contradictory and have therefore failed to be enforced the consumer's rights as such should be taken into account in his remedies to protect the consumer.'

The CISG differs independently from the Hague Conventions. In the latter instruments, the rules governing the establishment and the issues which are essential aspects of the contract have been separated.

### 2.2 Terms and conditions of sales and goods

The statutory remedies of SOGA 1957 and CPA 1999 should serve to redress the imbalance of bargaining power between consumers and traders in order to achieve contractual fairness. As such, it should reflect its consumer protection remedies. In the law of Malaysia, there are two conditions as conditions of right of party and warranty. According to Article 12 it clearly said that.

(2) A condition is a requirement that includes a vital purpose of the contract, the breach of which increases the right to treat the contract as a rescission.

in § 4 of this law, there is a right of seller and buyer, but it is a matter of limited legal capacity of the parties, legality of full powers, set-off, etc.

(3) A guarantee is a security arrangement in connection with a relationship, the breach of which gives rise to a right to compensation for damages, but not the right to reject the goods and to treat the contract as a withdrawal. Under Article 14 (b) of 1957, there is an implied warranty where the buyer will have and enjoy quiet possession of the goods [5]. There is the case of *Lee Heng and Co V Melchers and Co*, [6] while the Court of Appeal held that the measure of damages was directly assessed for breach of warranty and the claimant refused to take delivery and sue for damages, but "The CISG permits the seller to disclaim all implied warranties [7]. So I think there is a difference between acting on that and CISG being better than SGA 1957.

### 2.3 Restrictions on Sales and the Law on Goods

Consumers enter into various types of contracts for the supply of goods for their purpose. In general, most contracts have terms that are unfair to consumers. These terms are limited to consumer rights in Malaysia. On another, the well-known Consumer Protection Act from 1999, Malaysian consumers were crushed by this problem, although this law does not address this issue. This Act deals with the contact issue of the sale of goods, although the Malaysian Consumer Protection Act has just been amended by the CPA (Amendment) Act 2010, which divides unfairness into "procedural" and "substantive" unfairness [8]. Furthermore, the SGA 1957 does not burden the area of commercial law including contact law [9].

The CISG preserves the autonomy of the parties to dictate the content of their contract, but there are three exceptions as follows:

1. If x and y expressly or impliedly derogate from section 6
2. If the parties consider this convention appropriate, this convention may limit its applicability.
3. If a person dies or is injured, the court will be governed by their national consumer law.

### 2.4 Liability of traders Under contact:

According to Yusoff et al., [10] In the current state "Malaysia's Sale of Goods Act 1957 does not adequately protect consumers when transacting with goods." The Malaysian Sale of Goods Act contains certain requirements for the obligations of traders under sale of goods bonds. From Articles 12-14 of Malaysian Law, Terms and Conditions and Unintended Goods Act. On the contrary, this CISG has proper provisions in all places except the seller's liability for death or personal injury. In addition, the seller is liable to the buyer for compensation in accordance with Article 45 (1) (b) CISG, and the buyer is entitled to have the entire matter of compensation limited as stated in Article 74.

### 3. Importance of the 1980s (CISG)

Under Article 6, the CISG provides party autonomy where most of the rules of the contracting country exist in the CISG rule. At this point a party can choose its choice of law [11] but the problem is that Article 6 does not express an implied exclusion. However, The CISG is gathering ideas for further application. These ideals can be broadly achieved through

unification, filtration, flexibility, and practicality. The CISG influenced domestic law reform and development through several channels and the implementation of EC directives [12]. This influence transcends the borders of Europe. When analyzing the new Chinese Code of Obligations, one can inherently find a number of legal ideas with institutions familiar from the CISG [13]. The CISG allows for the avoidance of a serious case, including a fundamental breach, except for a less serious issue [14]. I think Malaysia should join the CISG because all domestic rules are naturally protected. As such, according to Ingeborg Schwenzer and Pascal Hachem, "all these shortcomings of national laws can be avoided by the application of the CISG" [15].

### 4. Why should the Malaysian government ratify the ciscg

#### 4.1 Question of Jurisdiction

If neither party presides in the contact state, the CISG can be applied, but according to Art. 1 letter CISG. For example, Malaysia is a non-contact state and Australia is a treaty state. As a result, private international law will be applied in Australia as a contract a state which is mentioned in Article 1(1). So in my opinion if Malaysia accedes to the CISG it will not waive these rights, although in many cases it depends on the contact. However, there is a conflicting issue between Article 95 and Article 1 (1) of the CISG. However, the CISG marks the success of the history of uniform law, consuming was initiated by 80 states to illustrate more than 80 global trade [16].

#### 4.2 Lack of contractual remedies in a contract for the consumer sale of goods in Malaysia

The predominance of caveat emptor has been the creation of more malpractices in consumer conduct in Malaysia, which means "let the buyer beware" causes numerous illegal practices in consumer businesses. In the modern market, this regulation is not used and most consumers do not know their terms of sale, which were elegantly designed according to the big sales rule and cannot be used in the current market economy.

#### 4.3 Internal problem of SMEs in Malaysia

The Malaysian government wants to trade internationally as it aims for a 41% SME share of GDP and 62% employment growth by 2020 [17]. SMEs can therefore face a strong legal hurdle when they have to choose a foreign law and use the applicable law for their contact. For this reason, they are not familiar with foreign law. In addition, it incurs the cost of money and time to educate themselves in this law to understand its contract proposals, solicitations, negotiations, and litigation. According to "Mahajan and Hasin [18] "Malaysia can overcome this problem if it ratifies the international legislation - CISG."

In such a case, SMEs may subject their sales contracts to the Sales Law by business parties from other states that have become members of the CISG, such as Canada, Russia, United States, Japan, South Korea, Brunei, United States of America, New Zealand. , Japan, China, Australia and Singapore. These states are Malaysia's main trading partners, accounting for two-thirds of world trade. Later, if Malaysia becomes a party to international trade, it can get countless opportunities like the above countries.

### 5. Conclusion

In the light of the above, I can suggest that it will be most

useful for the Malaysian Commercial Service worldwide if it ratifies the CISG 1980. Secondly, this will be governed by uniform law without worrying about the ambiguity of foreign law. Third, it can create more jobs than now and create higher turnover situations in Malaysia. Fourth, the Malaysian government has a good scope for ratification until 1980 (CISG), when the problem of consumer protection for halal products is enormously observed in Malaysia [19]. In addition, the Malaysian government will receive another facility as a contracting state rather than a non-contracting state.

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