



## **The Swiss Federal Supreme Court has ruled that the United Nations Convention on Contracts for the International Sale of Goods (the “Vienna Convention”) must prevail in Swiss domestic law**

In a recently published ruling, 4A 543/2018 dated 28 May 2019, the Federal Supreme Court has clarified an important feature of the law concerning contracts for the international sale of goods.

Our Highest Court has in fact confirmed that the United Nations Convention on Contracts for the International Sale of Goods (CISG), signed in Vienna on 11 April 1980 (in force in Switzerland since 1 March 1991), not only forms an integral part of Swiss domestic law, but also takes precedence over the rules of Swiss domestic law governing sales, in particular rules set out in the Swiss Code of Obligations (CO).

In the particular case of a contract for the sale of transferable property to a person based in a foreign country, if the latter is also a party to the CISG (and many are, e.g. Germany, France, the United States, China, cf.: <https://www.admin.ch/opc/fr/classified-compilation/19800082/index.html#id-ihni1>), the provisions of that Convention shall apply to the contract, to the exclusion of the CO.

The applicability of the CISG can, however, be excluded by the parties to the contract but only by means of an explicit and unambiguous provision. That is the major clarification provided by this case law. Tacit exclusion is not enough. In other words, a clause simply stipulating that the rules of Swiss law apply to the contract is insufficient to exclude application of the CISG to the contract because the CISG itself forms an integral part of Swiss law! Similarly, if the contract includes among its clauses legal and judicial institutions of Swiss law, that in itself is not enough to exclude the CISG because these institutions may also be referred to in the articles of this international convention. Similarly, according to the Supreme Court judges, the conduct of the parties during legal proceedings is not enough to exclude the CISG.

The absence of such exclusion may have quite significant consequences on the effects of the contract and the accompanying rights and obligations of the parties. As was the case in this particular instance, unlike the CO, the CISG does not stipulate a right to cancel the contract if a non-compliant delivery is made unless this constitutes a substantial breach of the contract (CISG Art. 51, para. 2).

The parties would therefore be well-advised to check all their contracts relating to the sale of transferable goods to a party based in a jurisdiction which has signed up to the CISG in order to make sure that this Convention has indeed been specifically excluded in compliance with the requirements of this new case law.

**WILHELM Avocats - Me Christophe Wilhelm - 26.08.2019**

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**Source :**

**<https://www.wg-avocats.ch/en/news/contract-law/the-swiss-federal-supreme-court-has-ruled-that-the-united-nations-convention-on-contracts-for-the-international-sale-of-goods-the-vienna-convention-must-prevail-in-swiss-domestic-l/>**