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UNIFORM LAW CONFERENCE OF CANADA

***UNIFORM ACT TO IMPLEMENT CONVENTIONS ON
INTERNATIONAL SALES (2020)***

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Uniform Act to Implement Conventions on International Sales (2020)

Comment: This Uniform Act implements the *Convention on the Limitation Period in the International Sale of Goods* and the *Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods*. These conventions establish a standard limitation period of four years for the initiation of legal proceedings arising from contracts for the international sale of goods. In the absence of any expression to the contrary by the parties to a sales contract, the conventions apply when the parties have a place of business in Contracting States or when the law of a Contracting State applies either through the applicable rules of private international law or by virtue of the choice of the contractual parties.

The Uniform Act also implements the *United Nations Convention on Contracts for the International Sale of Goods*. Canada has been party to this Convention since 1991 and it applies throughout the country. This Convention establishes uniform rules for the international sale of goods. The provisions of the Convention deal with the formation of the contract and the rights and obligations of the seller and buyer. The Convention does not govern the validity of the contract or its terms, nor does it deal with the seller's liability outside the contract. As with the unamended and amended Limitation Convention, in the absence of any expression to the contrary by the parties to the sales contract, the Convention on contracts for the sales good applies when the parties have a place of business in Contracting States or when the law of a Contracting State applies either through the applicable rules of private international law or by virtue of the choice of the contractual parties.

Finally, the Uniform Act allows the addition of other conventions related to international sales in the future, such as the *Unidroit Convention of 17 February 1983 on Agency in the International Sale of Goods* or a possible future convention in relation to sale of services.

The ULCC adopted the Uniform International Sales Conventions Act in 1998. The present act updates that act in accordance with the 2014 *Principles for Drafting Uniform Legislation Giving Force of Law to an International Convention* as well as the *Guidelines for Drafting Uniform Legislation Giving Force of Law to an International*

Convention (2019). As the act does not bring any substantive changes to the 1998 act, it is addressed at jurisdictions that have not adopted that act. The 1998 act was withdrawn by the ULCC with the adoption of this act.

The wording of Article 31 is the same in both the amended and unamended Limitation Convention. The article is a standard provision in private international law conventions. It allows federal states to identify the territorial units to which the application of the Convention will extend by making a declaration to this effect either upon signature, ratification or accession or at any time thereafter. Canada will make declarations pursuant to Article 31 upon the request of provinces and territories that have enacted implementing legislation. The content of Article 31 is reflected in the force of law provision of this Uniform Act.

Definitions

1. In this Act,

"Amended Limitation Convention" means the *Convention on the Limitation Period in the International Sale of Goods, as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods*, the text of which is prepared in accordance with Article XIV of the Protocol and is set out in Schedule 3. (Convention modifiée sur la prescription)

"Limitation Convention" means the *Convention on the Limitation Period in the International Sale of Goods*, the text of which is set out in Schedule 2. (Convention sur la prescription)

"Protocol" means the *Protocol amending the Convention on the Limitation Period in the International Sale of Goods*, the text of which is set out in Schedule 4. (Protocole)

"Sales Convention" means the *United Nations Convention on Contracts for the International Sale of Goods*, the text of which is set out in Schedule 1. (Convention sur la vente)

Comment: The decision to put definitions and rules of interpretation under the same or separate sections depends on the practice of each jurisdiction. They appear in separate sections in this Uniform Act.

The Sales Convention, Limitation Convention and Amended Limitation Convention are set out in the schedule. Simply referring to an external publication which contains the Convention, such as the website of the international organization which adopted it may not be sufficient to allow a court to take judicial notice of the Convention. The legislation governing evidence of some jurisdictions provides that a court shall take judicial notice of conventions that are printed by the Queen's Printer or the official printer of the jurisdiction in question.

The Protocol is set out in the schedule of the Uniform Act and implementing jurisdictions should set it out in the schedule to their implementing act for dissemination purposes. The act does not give the force of law to the Protocol. Canada will accede to the Protocol in order to become a Party to the Amended Limitation Convention and the Limitation Convention.

Interpretation

2. In interpreting the Amended Limitation Convention and the Limitation Convention, recourse may be had to:

(a) the *Yearbook of the United Nations Commission on International Trade Law, 1972*, vol. III, (New York: UN, 1973) (UN Doc. A/CN.9/SER.A/1972);

(b) the *Yearbook of the United Nations Commission on International Trade Law, 1972*, vol. III, supplement (New York: UN, 1973) (UN Doc. A/CN.9/SER.A/1972/Add.1); and

(c) "Commentary on the Convention on the Limitation Period in the International Sale of Goods" (UN Doc. A/CONF.63/17) in *Yearbook of the United Nations Commission on International Trade Law, 1979*, vol. X (New York: UN, 1981) (UN Doc. A/CN.9/SER.A/1979).

Comment: The materials referred to in the provision are available on UNCITRAL's website. The purpose of this interpretation rule is to ensure that courts and parties will

refer to the material set out in the provision before referring to domestic law to interpret the Conventions. This provision is in addition to the treaty interpretation principles codified in Articles 31 and 32 of the *Vienna Convention on the Law of Treaties*, Can. T.S. 1980 No. 37. The object of permitting judicial recourse to supplementary sources of interpretation is reflected in the observation of Justice La Forest in *Thomson v. Thomson*, [1994] 3 S.C.R. 551, at pp. 577-578, that

[i]t would be odd if in construing an international treaty to which the legislature has attempted to give effect, the treaty were not interpreted in the manner in which the state parties to the treaty must have intended. Not surprisingly, then, the parties made frequent references to this supplementary means of interpreting the Convention, and I shall also do so. I note that this Court has recently taken this approach to the interpretation of an international treaty in *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689.

Section 2 is not intended to have the effect of excluding other possible sources of interpretation. It merely indicates the principal source to be used in interpreting the Conventions. It is expected that other helpful resources will emerge. In particular, over time UNCITRAL's Case Law on UNCITRAL Texts (CLOUT) will provide a useful source for the evolving jurisprudence on the Conventions from the courts in all Contracting States.

[Inconsistent Acts

3. In the event of any inconsistency between this Act and any other Act, this Act prevails to the extent of the inconsistency.]

Comment: Legislation that is inconsistent with the act should be identified and amended to the extent of its inconsistency. If necessary, the act may contain the precedence rule set out by this provision; however, such a provision should be avoided as it imposes upon users the burden of determining the extent to which a provision of the act is inconsistent with the provisions of another act of the Legislative Assembly. A precedence rule may also create difficulties in interpreting subsequent acts dealing with the same subject-matter. To avoid internal conflict, enacting jurisdictions should ensure that if an equivalent provision appears in other acts with which this act might potentially be inconsistent, those other acts should be amended to give precedence to this act.

Force of Law

4(1) The Sales Convention has force of law in [jurisdiction].

Option A.1 - In cases where Canada has acceded to the Conventions and the Conventions are already applicable to Canada, jurisdictions can enact:

4(2) The Limitation Convention and the Amended Limitation Convention have force of law in [jurisdiction] on the first day of the month following the expiration of six months after the receipt, by the Secretary-General of the United Nations, of a declaration by Canada extending the application of the Convention to [jurisdiction] in accordance with paragraph 40(1) of these Conventions.

Option A.2 - In all other cases, jurisdictions can enact:

4(2) The Limitation Convention and the Amended Limitation Convention have force of law in [jurisdiction] from the date determined in accordance with paragraph 40(1) of these Conventions.

Option B

4(2) The Limitation Convention and the Amended Limitation Convention have force of law in [jurisdiction].

Comment: The force of law provision gives force of law to the Conventions in their entirety. Giving force of law only to some articles of the Conventions is not recommended as jurisdictions run the risk of omitting to give force of law to matters over which they have jurisdiction. Furthermore, it may be difficult to distinguish or to separate what is of federal or provincial jurisdiction.

The Sales Convention already applies internationally to all jurisdictions in Canada. Subsection (1) ensures that it continues to have force of law in jurisdictions which enact this Uniform Act.

Subsection (2) offers two main options with respect to the force of law provision for the Limitation Convention and the Amended Limitation Convention with option A subdivided further into sub-options A.1 and A.2. Each jurisdiction should determine

which option is the most appropriate. Because of the short period of time set out in Article 40 between the deposit by Canada of a declaration extending the application of these Conventions to a jurisdiction and the application of the Conventions to the jurisdiction at international law, the time required to take measures necessary to bring the act into force will be relevant in deciding which option to select.

Together, option A of subsection (2) and option A of the commencement provision allow jurisdictions to bring their act into force without giving force of law to both the Limitation Convention and Amended Limitation Convention until these Conventions apply to their jurisdiction at international law. A jurisdiction may select these options to avoid problems linked to coordinating the day on which the act enters into force with the day on which these Conventions apply to it at international law.

Option A is also useful when a jurisdiction has legislation that provides for the repeal of legislation that is not in force within a certain period of time. Option A would thus allow the jurisdiction to bring its implementing act into force to avoid the application of such legislation but the Convention would not have force of law until it applies to the jurisdiction at international law.

Each jurisdiction should ensure that its act is in force when the Limitation Convention and the Amended Limitation Convention start applying to it at international law (see the comment accompanying the commencement provision). Where this has not been possible and the Conventions start applying to the jurisdiction at international law before the act comes into force, option A should not be used as it may raise issues with respect to the retroactive effect of the Conventions. In such a case, it would be expected that the act would be brought into force as soon as it had been adopted and so option B would be used.

A jurisdiction selecting options A of both the uniform force of law and commencement provisions should note that this approach is not entirely transparent: on the face of the act it is not apparent if the Limitation Convention and the Amended Limitation Convention have started applying to the jurisdiction at international law. The jurisdiction may wish therefore to provide notice to the public when the Conventions start applying. This may be done, for instance, by publishing a notice in the jurisdiction's official publication. Ideally the notice would be available indefinitely, so that people would be

able to determine the effective date years later. Additionally, according to the jurisdiction's practice, a reference to the date on which the Conventions apply could be included in the published version of the act. The publication of the notice in the jurisdiction's official publication or the inclusion of the application date in its act must not be a condition precedent to the application of the Conventions.

Sub-option A.1 reproduces in full the mechanism for calculating the date on which the Conventions would start applying to the jurisdiction internationally. As indicated above, this sub-option can be selected when, at the time of enactment, Canada has acceded to the Conventions and the Conventions are already applicable to Canada (i.e. when the Secretary-General of the United Nations will be receiving the declarations extending the application of the Conventions to the enacting jurisdiction after the Conventions have become applicable to Canada internationally).

Sub-option A.2 refers to paragraph 40(1) of the Conventions. The reader of the Act would need to refer to the text of the Conventions to calculate the date on which the Conventions would start applying to the jurisdiction internationally. Sub-option A.2 would have to be selected by a jurisdiction that enacts its implementing act before the Conventions apply to Canada internationally because the period after which the Conventions would apply to the jurisdiction would not be known at the time of enactment. For a declaration deposited before the Conventions apply to Canada, the period would be six months from the deposit of the declaration if the declaration accompanies Canada's instrument of accession. For a declaration deposited after the instrument of accession but before the Conventions have become applicable to Canada internationally, the time would be the remainder of the six months calculated from the date of deposit of the instrument of accession. For a declaration deposited after the Conventions apply to Canada internationally, the period would be six months from the date of the receipt by the Secretary-General of the United Nations of the declaration.

Option B allows a jurisdiction to give force of law to both the Limitation Convention and the Amended Limitation Convention from the day on which its act comes into force. Option B may be needed by those jurisdictions where additional steps are necessary such that option A is problematic or where the Conventions already apply to the jurisdiction at international law. Paired together, option B of this section and option B or C of the

commencement provision ensure that the Conventions will not have effect in the jurisdiction by legislation before they apply to the jurisdiction at international law.

Jurisdictions selecting option B must be able to bring their act into force on the day on which the Limitation Convention and the Amended Limitation Convention apply to their jurisdiction at international law. They should communicate with Justice Canada to coordinate these events.

[Which Convention Applies Re Limitation Periods

5(1) The Amended Limitation Convention applies in respect of any State that is a Contracting Party to that Convention.

5(2) The Limitation Convention applies in respect of any State that is a Contracting Party to that Convention and is not a Contracting Party to the Amended Limitation Convention.]

Comment: This provision indicates when the Limitation Convention rather than the Amended Limitation Convention applies. Subsection (1) transcribes part of Article 44 bis of the Amended Limitation Convention and subsection (2) transcribes the rest of Article 44 bis and confirms that Canada did not make a declaration under this Article. Implementing jurisdictions may decide to omit this provision since the Amended Limitation Convention is given force of law by the act and so it is not necessary to restate its articles. However, including this provision could be useful to parties to a contract by making information on the application of the Conventions more readily available to them.

[Non-application of Conventions by Parties

6. The parties to a contract may:

- (a) exclude the application of a Convention set out in Schedule I, II or III by expressly providing in the contract that the Convention does not apply to the contract; or**

(b) otherwise exclude the application of a Convention set out in Schedule I, II or III, or derogate from or vary the effect of any of the Convention's provisions, in accordance with the terms of the Convention.]

Comment: The Limitation Convention, the Amended Limitation Convention and the Sales Convention will automatically apply to contracts for the international sale of goods that fall within their scope of application. However, each Convention also provide that parties may exclude the Convention's application (Article 3 of the Limitation Convention and Amended Limitation Convention and Article 6 of the Sales Convention) or limit the Convention's application (Article 6 of the Sales Convention). These provisions specify that an express exclusion will always result in the non-application of the excluded convention. It also reminds parties that the Conventions provide additional means of limiting their application. Implementing jurisdictions may decide to omit this provision since the Conventions are given force of law and so it is not necessary to restate their articles. However, including this provision could be useful to parties by making information on the application of the Conventions more readily available.

[Minister Responsible for the Administration of the Act

7. The Minister of [Ministry/Department] is responsible for the administration of this Act.]

Comment: Specifying which minister is responsible for the administration of an act in the act depends on the practice of jurisdictions.

[Binding on Crown/Government/State

8. This Act is binding on the [Crown/Government/State [of jurisdiction].]

Comment: If a jurisdiction's interpretation legislation already provides that the Crown/Government/State is bound unless otherwise stated in the particular act, there is no need to include this provision.

[Regulations

9. The *[name of regulation-making authority]* may make regulations for carrying out the purposes of this Act.]

Comment: Jurisdictions should consider whether regulation-making powers are needed before providing for them in the act. Regulation-making powers should be clearly expressed and should be no broader than is necessary.

[Repeal

10. The *[provincial or territorial Act that adopted the Uniform International Sale of Goods Act]* is repealed.]

Comment: The Uniform International Sale of Goods Act and the Act to Amend the Uniform Limitation of Actions Act (i.e., a uniform act adopted by the ULCC in 1976 to implement the *Convention on the Limitation Period in the International Sale of Goods*) are both withdrawn and replaced by this Uniform Act. Jurisdictions may either amend or repeal their legislation adopting the Uniform International Sales of Goods Act depending on the number of modifications required.

Commencement

Option A – Commencement on assent before the Limitation Convention and Amended Limitation Convention apply to jurisdiction

11. This Act comes into force on [assent / *insert date of assent to this Act*].

Option B – Commencement on proclamation on the day on which the Limitation Convention and Amended Limitation Convention apply to jurisdiction

11. This Act comes into force on [proclamation / the date or dates to be set by the Government].

Option C – Commencement on a specified day which is the day on which the Limitation Convention and Amended Limitation Convention apply to jurisdiction

11. This Act comes into force on [*insert day on which the Limitation Convention and Amended Limitation Convention apply to jurisdiction*].

Comment: There is a need to ensure that the Limitation Convention and Amended Limitation Convention have force of law in the implementing jurisdiction when they start applying to the jurisdiction at international law. The force of law and commencement provisions offer options which help avoid issues linked to coordinating the occurrence of these two events.

Three options are available with respect to the commencement provision in the Uniform Act. The points set out below should be considered by jurisdictions in deciding which option to select.

Option A can be combined with subsection 4(1) which gives force of law to the Sales Convention and option A of subsection 4(2) which gives force of law to the Limitation Convention and Amended Limitation Convention so that the Sales Convention which already applies throughout Canada will continue to have force of law in the enacting jurisdiction and the Limitation Convention and Amended Limitation Convention will only have force of law on the day on which they apply to the jurisdiction at international law.

- This would avoid the necessity for the federal and provincial or territorial governments to coordinate the application of the Limitation Conventions to a jurisdiction and the commencement of the act, therefore eliminating the risk that it will not have commenced when these Conventions start applying to a jurisdiction.
- As stated in the comment to the force of law provision, jurisdictions selecting this option should publish the date on which the Limitation Convention and Amended Limitation Convention start applying to their jurisdiction.

Under option B, the jurisdiction must proclaim its act on the same day that the Limitation Convention and Amended Limitation Convention apply to the jurisdiction at international law. The Sales Convention continues to apply to the enacting jurisdiction upon proclamation of the act.

- Option B would need to be combined with option B of subsection 4(2).

- A jurisdiction that adopts this approach faces some risk. If the date on which the Limitation Convention and Amended Limitation Convention will apply to the jurisdiction is not yet known, the jurisdiction must ensure that the proclamation will be issued on the date on which these Conventions will start applying once the date is known. Proclaiming the act into force may be difficult to achieve in practice because the time between learning the effective date that the Conventions will apply to the jurisdiction and the date itself may be too short to issue a proclamation.
- As stated in the comment to the force of law provision, a jurisdiction may choose option B if additional steps are necessary such that it is problematic to bring the act into force with option A.
- Option B would be combined with option A of subsection 4(2) if proclamation is issued before the Limitation Conventions start applying to the jurisdiction.

Option C allows the act to commence on the day specified in the commencement provision which is the day on which the Limitation Convention and Amended Limitation Convention apply to the jurisdiction at international law.

- This option would be combined with option B of subsection 4(2).
- Enacting jurisdictions can select this option if the day on which the Limitation Convention and Amended Limitation Convention will apply to their jurisdictions is known at the time of the adoption of the act.

Schedule [*Insert the full text of each convention and of the protocol. The full texts are available on the treaty depositary's website:*

https://treaties.un.org/Pages/UNTSONline.aspx?id=2&clang=_en]

Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol amending the Convention on the Limitation Period in the International Sale of Goods

Convention on the Limitation Period in the International Sale of Goods

Protocol amending the Convention on the Limitation Period in the International Sale of Goods

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