
February 2012

Sweden ratifies part II of the United Nations Convention on Contracts for the International Sale of Goods (CISG)

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a UN convention on contracting and sales between parties residing in different countries, and was adopted in 1980. The convention sets forth rules on sales and contracting in the same way as the Swedish Sales of Goods Act does between Swedish parties. The convention was incorporated as an act in Sweden in 1987, and has since been very successful both in Sweden and internationally as a well-functioning and applicable act regarding international sales. However, when ratifying the convention, Sweden chose only to ratify the rules concerning sales (part III) and made reservation against the formation of contracts (part II). Part II has been ratified by all other convention states except Sweden, Denmark, Norway, Finland and Iceland. In addition the Nordic countries have an exemption regarding sales between parties in the Nordic countries. In these cases, national laws shall be applied in lieu of the CISG.

In a bill from April 2011, the Government proposed that Sweden shall withdraw its reservation regarding part II of CISG. The same type of work is carried out on a Nordic level in order for the same thing to take place in our neighbouring countries. Sweden, which has previously been sceptical to part II of CISG, has now analysed the outcome of the period during which CISG has been applied, and has reached the conclusion that the effects which part II give rise to do not adversely affect Sweden or Swedish parties to the degree that Sweden should continue to be outside the collaboration. Instead, it is advantageous that the same rules apply to all convention states.

Part II of CISG contains rules on formation of contracts, primarily as regards offer and acceptance. What is important to consider is that the convention differs from Swedish law in certain parts, and therefore the result of a party's actions may be different after Sweden has ratified all parts of the convention. Under Swedish law,

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the “promise principle” applies which means that an offer which is sent to a counterparty is binding, for the sender, until the acceptance period has lapsed. Under CISG, the contract principle applies instead, which generally means that an offeror becomes bound by its offer first when this is accepted by the counterparty. Thus, under CISG there are greater possibilities to withdraw an offer compared to under Swedish law.

Another difference between the Swedish rules and CISG is the treatment of an equivocal acceptance, i.e. when the recipient’s acceptance differs from the offer. The CISG contains no rules on what applies in the event of such an impure acceptance, which has the effect that a contract can only be formed if the recipient expressly accepts this. Under Swedish law, the recipient can be bound by the contents of an equivocal acceptance if he/she does not react to the counterparty’s “counter offer”.

However, it shall be noted that the difference the cases above in practice is minor, since the parties normally communicates via email or telephone, and the contracts are formed relatively quickly after an offer has been made, with thoroughly discussed information between the parties.

The amendment to the law comes into effect on the date announced by the Government. Withdrawal of the reservation against the convention takes six month to effectuate and thereafter the amendment must be incorporated into law and it is hence not possible to say when this will take place exactly.



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