

- 6 Forests, Solomon Islands
- 6 Greenpeace web site: www.greenpeace.org - Forests, Solomon Islands
- 7 Report by WWF-UK: Foreign Direct Investment and the Environment (OECD Webpage - www.oecd.org)
- 8 BHP is the major shareholder of the Ok Tedi mine in Papua New Guinea, which allegedly releases 80,000 tonnes of waste into the river each day. Environmental reports indicate that the Ok Tedi River, its fish and the surrounding forests have suffered increasing environmental harm in recent years. Source: Mineral Policy Institute, <http://www.mpi.org.au/>
- 9 GATT 1947 is a multilateral treaty aimed at promoting trade through the gradual reduction of tariffs and other import barriers. It is governed by the World Trade Organisation (WTO) which was created in 1995.
- 10 Chapeaux of Article XX
- 11 Under the Kyoto Protocol carbon credits act as a tax on companies having high greenhouse related emissions. They also serve as a subsidy for companies seeking to redevelop environmentally sustainable businesses.
- 12 Corporate Code of Conduct Bill, 2000
- 13 Introduced as the Corporate Code of Conduct Act by Congresswoman Cynthia McKinney, 106th Congress

the vienna convention – towards global regulation of commerce

by Ross Becroft, Louis Gross & Associates

The United Nations Convention on Contracts for the International Sale of Goods ("The Convention") was adopted in Vienna on 10 April 1980. It is an ambitious attempt to create one set of rules to govern international contracts for the sale of goods. Presently, 57 countries have become signatories to the Convention. Major signatories include the United States, China, Canada and many European Union States. Australia became a signatory in 1987 and the Convention was adopted into domestic law through the passing of mirror State Sale of Goods legislation. In Victoria, the relevant Act is the *Sale of Goods (Vienna Convention) Act 1987*. Notable nations that are not signatories include India, Japan and the United Kingdom.

Despite the grand ambitions of the drafters, the Convention has not as yet operated as a ubiquitous global regime. This is primarily because only 57 nations have become signatories. The main reason for the slow uptake is that many countries are not prepared to give up the sovereign right of the nation state to govern commerce conducted by their constituents. The United Kingdom is a case in point: the Convention contained far too many European civil law concepts for it to be acceptable to the English. With many developing countries, it has more to do with an inherent suspicion that the Convention would benefit developed nations at their expense. In Australia, many business people

(and even some lawyers) have never heard of the Convention. Many others believe that it is an opt-in regime that requires consent by the parties to a sale transaction in order for it to apply. This is not the case. If private parties are resident within contracting states, then the Convention will govern the sale of goods contract unless it is specifically excluded in the contract.¹ Further, even if only one of the parties is resident within a contracting state, the contract may be governed by the Convention if the rules of private international law point to the application of the law of a contracting state.² This means that if an Australian company entered into a sale contract with an Indian company and the sale contract was governed by the laws of Australia, then the Convention would govern the contract.

The major difference between the Convention and the common law is that the focus of the Convention is on forcing the parties to carry out their contractual obligations and make the best of a situation, even where there has been a breach by one of the parties. Under the Convention, a party may only avoid a contract where there has been a fundamental breach, in that the party claiming harm has been substantially deprived of what that party has been entitled to expect under the contract.³ Even in this situation a buyer cannot simply send the goods back to the seller and claim damages. The buyer must take steps to safeguard and preserve the goods

and, where the goods are subject to rapid deterioration, (eg. fresh produce) the buyer must try to sell the goods. The primary reason for this type of regulation is that in many cases the buyer and seller will be thousands of kilometres apart and it is simply not practicable to send the goods back due to minor defects. In keeping with this philosophy, the major remedy available to both buyers and sellers under the Convention is specific performance. This contrasts starkly with the common law, which traditionally allows parties to rescind a contract upon an unremedied breach and mount a claim for damages.

There has only been one reported case in Australia dealing with the Convention. However, that decision of *Roder Zelt-Und Hallenkonstruktionen GmbH v Rosedown Park* (1995) 57 FCR 216 predominantly concerned rights under a retention of title clause. Article 4 of the Convention regulates the rights and obligations of parties to an international contract for the sale of goods. However, the article specifically excludes from its ambit issues relating to the validity of a contract or ownership of property in the goods. Therefore, while the *Roder* case made extensive reference to the Convention, being the applicable law, *Roder* was decided upon domestic property law principles rather than upon a judicial interpretation of the Convention. German Courts have generated by far the most case law concerning the

Convention. One of the key provisions of the Convention provides that in interpreting the Convention, "regard is to be had to its international character and the need to promote uniformity in its application and the observance of good faith in international trade."⁴ Scholars have generally read this to mean that if, for example, an Australian Court was interpreting the meaning of an Article of the Convention, it would be obliged to take into account decisions made in, for example Germany relating to that Article. There is also an open question at this stage as to whether parties subject to the Convention must act in good faith. Good faith is again a cornerstone of civil law but is not a requirement for the parties under traditional common law contracts.

The Convention can apply to contracts

whether or not they are reduced to writing. Most sale contracts simply consist of a purchase order and an invoice and lawyers are mostly likely to be looking at the documentation after something has gone wrong. If lawyers do have the luxury of drafting an international sale contract, it is important to note that the Convention can be entirely or partially excluded from the contract or the application of the Convention may be varied under the contract.⁵ Ironically, this flexibility is also detrimental to the object of the Convention being accepted by States and private parties as the universal "rulebook" for the sale of goods.

The Convention does not cover goods sold for personal or household use, ships or aircraft or stocks and securities. It of course also does not regulate the sale and purchase of

services, which are on the increase worldwide.

For further information, see the website run by Pace University located in upstate New York at www.cisg.law.pace.edu. This site is an extensive resource and contains an annotated commentary on each article of the Convention together with an up to date database with academic articles and foreign case law.

NOTES

- 1 See Article 1(1)(a)
- 2 See Article 1(1)(b)
- 3 See Articles 25, 49 and 64
- 4 See Article 7(1)
- 5 See Article 6

go global!

by Emma Weston, AWB Limited

Going global - everyone seems to be doing it. The globalisation imperative appears unstoppable and is affecting all commercial and community sectors. This article is a brief review of how this trend is changing the delivery of legal services in the new millennium.

Mergers

An obvious global strategy is to increase physical presence and many large multi-national law firms have got even bigger in recent years. Local mergers have also been popular and are often driven also by the threat of being too small in the global marketplace to attract and keep clients. Law firms are seeking to provide a "seamless service" to clients and presumably believe this can be achieved (in part at least) by having an office wherever a client does business. Whether more offices and more lawyers will result in the provision of greater service to clients remains to be seen.

Multidisciplinary Practices (MDPs)

These are essentially practices which combine services offered by different professions. For example: legal and accounting services or legal and financial services. In Australia, there are still tight restrictions on operating MDPs due to concerns about issues such as solicitor/client privilege and integrity of trust accounts. Even in the United States, the American Bar Association recently voted against fee-sharing between lawyers and accountancies and the US Securities and Exchange Commission declared that auditor independence could be compromised if an MDP provided legal advice to an audit client. Despite these limitations, the desire to offer a "one stop shop" for clients may be attractive. There are obvious synergies in combining many sorts of practices. For example, the extensive resources of the large accounting firms will prove handy when it come to supporting the legal services side of the business. The big five accounting firms have already achieved global reach and are arguably well-positioned to diversify their fee base.

The internet

The most pervasive and exciting trend is the use of technology in the race to go global. The mere existence of a website is decidedly passé these days and law firms' existing and prospective clients are looking for value added services as well as information. The use of technology, especially the internet, means that a law firm should be able to deliver services to anyone anywhere.

Some law firms are making their websites interactive by providing information in innovative ways so that their website is used as a resource by clients. The internet is also increasingly used as a means of directly delivering legal services. Many internet legal services are provided by non-lawyers and concentrate on the DIY market. There are many sites which provide pro forma agreements and precedent documents which can be downloaded and manipulated for a price. At sites such as legalmart.com.au a user can create legal documents, access legal