

Article 10

For the purposes of this Convention:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

(b) If a party does not have a place of business, reference is to be made to his habitual residence.

OVERVIEW

1. Article 10 provides two rules addressing issues linked to the location of a party: if a party has multiple places of business, the rule in article 10 (a) identifies which is relevant for purposes of the Convention; article 10 (b), on the other hand, states that a party which does not have a place of business is deemed located at that party's habitual residence.¹ These rules are helpful, as the location of the relevant place of business is important under various provisions of the Convention, including the main provision governing the Convention's applicability (article 1).²

APPLICATION OF ARTICLE 10 (a)

2. Article 10 (a) has been cited in various decisions,³ but it has actually been applied in determining the relevant place of business in only a few cases. One court used the provision to decide whether a contract concluded between a seller in France and a buyer with places of business both in the United States of America and in Belgium was governed by the Convention.⁴ The court reasoned that, since the invoice was sent to the buyer's Belgian place of business and since it was in Dutch (a language known only at the buyer's Belgian offices), the Belgian place of business was most closely connected to the contract and its performance; the Convention therefore applied. The court also noted that, because the Convention was in force in the United States of America, the Convention would apply even if the buyer's relevant place of business was in that country.

3. In a different decision, an arbitral tribunal determined that the Convention was applicable pursuant to article 1 (1)(a). To reach this conclusion, the tribunal first had to determine which among several places of business of the seller was the relevant one. The tribunal stated that, pursuant to article 10 (a), the place of business to be taken into account was the one located in the Russian Federation, on the grounds that "Russia had a closer connection with the contract as the goods were to be produced in Russia, according to Russian standards and delivered on Russian ships, being all these circumstances perfectly known by the parties".⁵

4. Another court⁶ employed article 10 (a) to determine whether a sales contract was international under the

Convention. The contract arose out of a purchase order sent by a buyer with its place of business in France to an individual, also located in France, that represented the seller, which had its offices in Germany. In deciding whether the contract was "between parties whose places of business are in different States" for purposes of article 1 of the Convention, the court noted that "the order confirmations emanating from the seller, the invoices, and the deliveries of the goods were made from the seat of the seller in Germany"; thus even assuming that the seller had a place of business in France, the court reasoned, "the place of business 'which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract' . . . is indeed the place of business whose seat is in [Germany]." Thus, the court concluded, "[t]he international character of the disputed contract is as a consequence established." Similarly, an arbitral tribunal relied on article 10 (a) to decide whether the contract concluded between a buyer with place of business in Serbia and a seller with a place of business in Germany and one in Serbia was international. In light of the fact that "the leading role in conclusion and performance of the contract was performed by the Swiss [place of business of the seller] (it conducted negotiations, signed the contract, delivered the machine from Switzerland, the payment was performed at its account, etc.), while the Serbian [place of business] was only involved in the attempts to reach the settlement regarding an existing debt,"⁷ the tribunal decided that the contract was international.

5. In another case⁸ a court was called upon to decide whether the Convention applied to the claim of a German manufacturer of floor covering who demanded that the Spanish buyer pay for several deliveries. The buyer argued that it had contracted only with an independent company located in Spain, thus raising the question whether there was an international sales contract within the meaning of article 1 of the Convention. As the buyer was aware, the Spanish company with whom it allegedly dealt had links with the German plaintiff, including the fact that members of the Spanish company's board overlapped with those of the German seller. The court concluded that the contract was an international one subject to the Convention. It found that, instead of the Spanish company, the German manufacturer was the buyer's contracting partner and because the Spanish company lacked legal authority to bind the German seller,

the Spanish company did not constitute a separate place of business of the seller. Even if the Spanish company was such a place of business, the court reasoned, the seller's German place of business had the closest relationship to the contract and its performance given the German manufacturer's "control over the formation and performance of the contract, which the [buyer] was well aware of." Thus the court found that the seller's German place of business was the relevant one under article 10 (a).

6. In yet another case, a court had to decide a dispute between a partnership between a German and an Austrian company, carrying out construction work in Germany, and an Austrian company, to which that partnership had sold three pieces of construction equipment to be picked up at the construction site. On the issue of applicability of the Convention, the court considered the seller's relevant place of

business to be the construction site where the contract had been concluded and where the equipment was to be picked up by the buyer. According to the court, pursuant to article 10 (a), the construction site had the closest relationship to the contract and its performance.⁹

7. In another decision¹⁰ the court invoked article 10 (a) in holding that, if a party has multiple places of business, it is not always the principal one that is relevant in determining whether a contract is governed by the Convention.

APPLICATION OF ARTICLE 10 (b)

8. Article 10 (b) has been referred to in very few decisions, in which the courts merely described the text of the provision,¹¹ if at all.¹²

Notes

¹United Nations Conference on Contracts for the International Sale of Goods, Vienna, 10 March–11 April 1980, Official Records, Documents of the Conference and Summary Records of the Plenary Meetings and of the Meetings of the Main Committee, 1981, 19.

²For provisions referring to a party's "place of business", see articles 1 (1), 12, 20 (2), 24, 31 (c), 42 (1) (b), 57 (1) (a) and (2), 69 (2), 90, 93 (3), 94 (1) and (2), and 96.

³See U.S. District Court, Northern District of California, United States, 2 November 2005, available on the Internet at www.cisg.law.pace.edu; Oberster Gerichtshof, Austria, 26 January 2005, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 549 [Audiencia Provincial de Valencia, Spain, 7 June 2003] (see full text of the decision); CLOUT case No. 433 [U.S. District Court, Northern District Court of California, United States, 27 July 2001], *Federal Supplement (2nd Series)* vol. 164, p.1142 (*Asante Technologies v. PMC-Sierra*), also available on the Internet at www.cisg.law.pace.edu (merely quoting the text of article 10 (a)); Oberlandesgericht Stuttgart, Germany, 28 February 2000, English translation available on the Internet at www.cisg.law.pace.edu; Tribunal of International Commercial Arbitration at the Russian Federation Chamber of Commerce and Industry, Russian Federation, 11 May 1997, available on the Internet at www.cisg.law.pace.edu (citing article 10 (a) in deciding that a party's relevant place of business was in Switzerland rather than in the United Kingdom—without, however, specifying any reason for the decision).

⁴Rechtbank Koophandel Hasselt, Belgium, 2 June 1999, available on the Internet at www.law.kuleuven.be.

⁵CLOUT case No. 727 [Chamber of National and International Arbitration of Milan, Italy, 28 September 2001].

⁶CLOUT case No. 400 [Cour d'appel Colmar, France, 24 October 2000] (see full text of the decision).

⁷CLOUT case No. 1021 [Foreign Trade Court of Arbitration attached to the Serbian Chamber of Commerce, Serbia, 15 July 2008] (Milk packaging equipment case), English translation available on the Internet at www.cisg.law.pace.edu.

⁸Oberlandesgericht Stuttgart, Germany, 28 February 2000, available on the Internet at www.cisg.law.pace.edu.

⁹CLOUT case No. 746 [Oberlandesgericht Graz, Austria, 29 July 2004].

¹⁰CLOUT case No. 261 [Bezirksgericht der Sanne, Switzerland, 20 February 1997].

¹¹Oberlandesgericht Hamm, Germany, 2 April 2009, available on the Internet at www.cisg-online.ch; Landgericht Hamburg, Germany, 11 June 2003, English translation available on the Internet at www.cisg.law.pace.edu; CLOUT case No. 106 [Oberster Gerichtshof, Austria, 10 November 1994] (see full text of the decision).

¹²For a decision simply citing article 10 (b), without even referring to its text, see Tribunal cantonal du Valais, Switzerland, 2 December 2002, English translation available on the Internet at www.cisg.law.pace.edu.