



The Law on the Sale of Movable Goods According to the Sales of Goods Act 1957

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1. Introduction

The Malaysian law on the sale of movable goods is governed by a number of laws, the main provisions of which are found in the Sales of Goods Act 1957 (SOGA) and are the subject of this outline. The SOGA contains supplementary provisions on the conclusion of contracts which are otherwise generally governed by the Contracts Act 1950 (CA). In addition, it determines the essential obligations of the seller and buyer and contains provisions on default. In addition, the provisions of the Consumer Protection Act 1999 (CPA) also apply in this respect for consumers. What may seem somewhat surprising from a German perspective, the SOGA also contains regulations on how and when ownership of the goods sold is transferred. Since the transfer of ownership and contract law are systematically intertwined, an isolated consideration, as would be customary in Germany, is not possible, but must be viewed as a regulatory unit.

2. The Legal Mechanism of SOGA

Sales contracts can generally be concluded without formal requirements. It is important, as is typical in common law, that the contract takes into account all circumstances, which is why contracts are usually much more extensive. However, since this is not always possible or impracticable, for example in the retail sector, the SOGA provides appropriate rules. The SOGA assumes that these rules are implied unless otherwise agreed.

3. Definition

The SOGA defines contracts of sale as contracts under which the ownership of a movable asset is transferred by the seller to the buyer in exchange for payment, or the seller agrees to transfer the ownership of a movable asset to the seller in exchange for payment. Conceptually, these two types of sales contracts are distinguished as sale and agreement to sell. With a sale the ownership is transferred to the buyer with the conclusion of the contract, with an agreement to sell the transfer of ownership must still take place, i.e. it is either subject to a time limit or actually subject to a condition precedent. An agreement to sell also becomes a sale when the conditions are met.

4. Obligations of the Seller

a) Transfer of Title

The seller has the main obligation to ensure that the ownership of the object of sale is transferred to the buyer at the agreed time. The parties are in principle free to determine this time.



The object of sale can be existing goods which are owned or possessed by the seller. However, it is also possible that the seller sells goods that are still to be procured or produced, which the SOGA calls future goods. In the case of such future goods, however, the transfer of ownership takes place at the earliest when the goods are procured or created.

As under German law, a contract of sale can be concluded in Malaysia for unascertained good and thus still require the seller to ascertain them. Here, too, the transfer of ownership takes place at the earliest when they are ascertained.

b) Delivery

A further main obligation is the delivery at the agreed time. The term delivery does not only refer to the transfer of possession, but basically everything that the parties have agreed upon as such. The delivery may also consist in the putting an authorized third party in the possession the bought goods.

c) Quality of Goods

The goods must always have the quality that was contractually agreed. Otherwise, the seller's description of the goods is decisive. As a general rule, the specific intended use of the buyer does not constitute a quality characteristic of the purchased goods. If the buyer cannot use the goods for his specific purpose, this does not constitute a defect. However, a corresponding intended purpose can be agreed upon, whereby the concrete intended use is considered to be a feature of the object of sale.

If large quantities are sold, each object of sale must correspond to the description or have the contractually agreed properties. If only an agreement regarding the quality of the purchased goods is determined by a sample, it is sufficient that the bulk of the sold goods have this quality.

5. Obligations of the Buyer

The main obligation of the buyer is the payment of the agreed purchase price and the acceptance of the goods. If no contractual agreements have been made here, payment and delivery must be made in exchange.

6. Contract Avoidance

Under certain circumstances the contract is void and therefore neither the seller nor the buyer is obliged to fulfill it.

Under the SOGA, this is the case in particular if the seller has concluded a contract for non-existent goods. The contract is then void. However, this only applies if the seller was not aware of the non-existence.

If the goods perish between agreement to sell and sale through no fault of either party, the contract is also void.



7. Rights of the Buyer

In principle, in the event of breach of contract, the buyer can demand specific performance in accordance with the contract and can also sue for such specific performance.

However, if the breach of contract is substantial, there is also the possibility to repudiate the contract. The SOGA leaves it to the parties to stipulate which contractual obligations they consider essential (condition) or non-essential (warranty). However, the SOGA implies that a condition exists to the extent that the seller guarantees to be entitled to sell and transfer the object of sale and that the object of sale corresponds to the description. Alternatively, instead of repudiation, the buyer can also demand claim damages.

In the event of a breach of warranty, the only option is to claim damages.

8. Rechte des Verkäufers

The seller can always demand payment and enforce this claim legally. If the ownership has already been transferred to the buyer but is still in the possession of the seller, he may withhold the goods or stop the delivery and also obtain a lien on the goods. Finally, he may also sell the goods as a substitute.

9. Sicherungsrechte

Malaysian law also offers the possibility of agreeing a retention of title. The transfer of ownership can be made contractually dependent on the full payment of the purchase price. However, this requires an explicit agreement in the main contract and should always be made in writing for the purpose of evidence. Therefore, notes contained in the shipping note or in subsequently attached terms of business are not sufficient. Since a third-party acquisition in good faith is also possible under Malaysian law, the simple retention of title only protects against the insolvency risk of the buyer. Therefore, the delivered but not yet transferred goods should be identifiable as third party goods for the buyer, e.g. by marking or storing them accordingly. An extended retention of title is not suited for individual cases, as further contractual relationships between the seller and the purchaser independent of the purchase contract would have to be established. Letters of credit represent a better alternative here.

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