

**Speech by LO(IL) at the 2022 CISG Conference - The CISG, 40 Years
and Beyond: What the Past Will Bring to the Future &
Opening Ceremony of 19th Willem C. Vis (East) International
Commercial Arbitration Moot (English only)**

Distinguished guests, ladies and gentlemen,

1. It is my great pleasure to be here online today at this 2022 CISG Conference, and the Opening Ceremony of the 19th Willem C. Vis East International Commercial Arbitration Moot (or the 3rd Virtual Vis East as it has come to be known). May I first express my gratitude to the Asian Academy of International Law and the Vis East Moot Foundation Limited for their dedicated efforts in making the events possible. Together they have provided a valuable platform for us to reflect on the achievements of the CISG in the last four decades and to look ahead. I am also thankful for this opportunity to share about the recent developments on the CISG from the Hong Kong Special Administrative Region (“SAR”) perspective.

Enactment of the Ordinance to implement the CISG

2. For historical reason, although the CISG entered into force for China in 1988, it is currently not applicable to the Hong Kong SAR. A public consultation on the proposal to apply the CISG to the Hong Kong SAR (“Public Consultation”) was conducted by our Government in 2020. Noting that there is general support for the proposal among the respondents to the Public Consultation, and after consulting the Legislative Council Panel on Administration of Justice and Legal Services, the Government introduced the Sale of Goods (United Nations Convention) Bill into the Legislative Council in 2021.

3. The Bill led to the enactment of the Sale of Goods (United Nations Convention) Ordinance (Cap. 641) (“Ordinance”) in September last year. The object of the Ordinance is to implement the CISG in the Hong Kong SAR¹. The Ordinance has not yet come into operation, it will do so on a day to be appointed by the Secretary for Justice by notice published in

¹ Section 4 of the Ordinance provides that the CISG has the force of law in the Hong Kong SAR.

the Gazette². It is envisaged that the Ordinance will take effect later this year.

Applying the CISG to the Hong Kong SAR

4. At the external level, subject to completion of the relevant process under Article 153 of the Basic Law³ as well as requisite formal notification by our Central People's Government to the Secretary-General of the United Nations (as depositary for the CISG) for applying the CISG to the Hong Kong SAR, the Convention is expected to apply to the Hong Kong SAR later this year, tying in with the commencement date of the Ordinance.

Benefits of applying the CISG to the Hong Kong SAR

5. Application of the CISG to the Hong Kong SAR will bring a lot of

² Section 1(2) of the Ordinance.³ Article 153 of the Basic Law provides (inter alia) that, “[t]he application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.”

³ Article 153 of the Basic Law provides (inter alia) that, “[t]he application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region.”

benefits. The Hong Kong SAR has enjoyed a reputation as an international trade hub and a leading centre for international legal and dispute resolution services in the Asia-Pacific region.

6. With regard to trade in goods, according to the data of the World Trade Organization's World Trade Statistical Review 2021, the Hong Kong SAR was the world's 6th largest trading entity in 2020, with the value of its total merchandise trade reaching US\$1,119 billion that year, accounting for 3.2% of world total trade⁴. The success of Hong Kong's arbitration services is also globally recognized, with the city ranking the third out of the five most preferred seats for arbitration globally according to the 2021 International Arbitration Survey conducted by Queen Mary University of London⁵.

7. Applying the CISG to the Hong Kong SAR is in line with, and will further enhance, the status and reputation of this jurisdiction.

Potential to drive trade growth

⁴ See: <https://www.tid.gov.hk/english/aboutus/publications/tradestat/wmttt.html>.

⁵ See: <https://arbitration.qmul.ac.uk/research/2021-international-arbitration-survey/>.

8. Almost all major trading members of the World Trade Organization and nearly half of the countries participating in the Belt and Road Initiative are Contracting States to the CISG. Further, the CISG is applicable to more than half of Hong Kong's top 20 trading partners in 2021 by total trade value, including, for example, Mainland China, the USA, Singapore, South Korea, Japan, Viet Nam and Germany⁶.
9. The CISG provides a set of uniform rules governing contracts for the international sale of goods within its scope. In the spirit of its preamble, the application of the CISG to the Hong Kong SAR can therefore contribute to the removal of legal barriers in trade between the city and its overseas trading partner countries from different legal traditions and promote the development of such trade⁷.

Facilitate deal making and reducing transaction costs

10. Moreover, applying the CISG to the Hong Kong SAR will allow for a

⁶ See: https://www.tid.gov.hk/english/trade_relations/mainland/trade.html.

⁷ Preamble of the CISG.

uniform sales law to govern the bulk of Hong Kong businesses' international sales transactions, enabling businesses to trade with their overseas counterparts on a fair and level playing field by using a sales law which are familiar to both.

11. In addition, when the CISG applies, it provides legal rules governing international sale of goods contracts and largely avoids the choice-of-law question often faced by businesses when dealing with different commercial law regimes, thereby introducing certainty in commercial transactions and decreasing transaction costs.

12. Bearing in mind that party autonomy is a fundamental principle of the CISG, taking into account their specific needs and circumstances, parties to a sale transaction can, by agreement, opt out of the CISG entirely in favour of other law or derogate from or vary the effect of virtually any CISG rule⁸.

13. For traders who have not considered or included specific provisions to govern their relevant contractual relationships, the automatic application

⁸ Article 6 of the CISG.

of the CISG could also provide a safety net to protect their interests.

Enhancing the Hong Kong SAR's competence in resolving CISG disputes

14. Applying the CISG to the Hong Kong SAR and implementing it in Hong Kong law may also bring indirect benefits by enhancing the competence of the Hong Kong legal profession in advising and handling CISG-related disputes, and thereby reinforcing Hong Kong's position as a leading centre for international legal and dispute resolution services in terms of both arbitration and litigation. The Courts, legal practitioners, arbitration professionals and academics in Hong Kong could contribute to the development of international commercial and trade law.

Application scope of the CISG - Reservation under its Article 95

15. As the audience may know, the CISG applies only to an international sale of goods contract (namely, a contract of sale of goods between parties whose places of business are in different States):

(a) when those States are Contracting States (Article 1(1)(a)) of the CISG

or

(b) when the rules of private international law of the forum lead to the application of the law of a Contracting State (Article 1(1)(b)) of the CISG.

Under its Article 95, a State may, however, declare at the time of joining the CISG that it will not be bound by Article 1(1)(b), which excludes the application of the CISG through the application of the private international law rules.

16. China has made a reservation under Article 95 of the CISG (declaring that it is not bound by Article 1(1)(b)), meaning that it applies the CISG rules only to international sales contracts between parties whose places of business are in different Contracting States to the CISG (as required by Article 1(1)(a)). In response to the submissions received in the Public Consultation held in 2020, subject to the completion of the requisite application procedures and notification mentioned earlier, the CISG is expected to apply to the Hong Kong SAR in full, that is without China's Article 95 reservation – an arrangement made possible under the principle of “one country, two systems” as enshrined in the constitutional

instrument of the HKSAR, the Basic Law.

Any inconsistency between the Ordinance or the CISG and any other Hong Kong law & Issues of interpretation

17. Regarding implementation, there are differences between the CISG (being a set of uniform international sales rules) and relevant existing Hong Kong law concerning rules for formation of contract of sale and the rights and obligations of the seller and buyer arising from such a contract, which include remedies for breach of contract. Under section 5 of the Ordinance⁹, these differences will be subject to the overriding effect of the relevant provisions of the CISG.

18. These and other legal issues would inevitably require careful interpretation and application by relevant courts and tribunals. They would also be assisted by many of the CISG rulings and reference materials available online. They would be assisted by Article 7(1) of the CISG, stipulating that “[i]n the interpretation of this Convention, regard

⁹ Section 5 of the Ordinance provides that if there is any inconsistency between the Ordinance or the CISG and any other law, the Ordinance or the CISG prevails to the extent of the inconsistency.

is to be had to its *international* character and to the need to promote uniformity in its application and the observance of good faith in international trade.”

19. They together would help tribunals and practitioners avoid the trap of the so-called “homeward trend” ie “the tendency to project ... onto the international text of the Convention one’s familiar domestic law” recently raised again by Professor Harry Flechtner, when he wrote the preface for the 2021 edition of the leading text on the CISG¹⁰.

20. With these tools and, if I may add, international mooted competition like the present one, I am confident that our tribunals and practitioners, experienced in the resolution of international disputes and construction of international private law treaties, would apply the necessary and appropriate international perspective in CISG matters.

Mainland – Hong Kong SAR transactions

¹⁰ Honnold & Flechtner, *Honnold’s Uniform Law for International Sales under the 1980 United Nations Convention* (Kluwer, 5th ed, 2021) Preface.

21. On a further note, being an international treaty governing international sale of goods, the CISG does not apply to transactions within different regions of China, including those between businesses in the Mainland and businesses in the Hong Kong SAR. In the Public Consultation, there was general support to apply the CISG rules to Mainland – Hong Kong SAR transactions by way of a Mainland – Hong Kong SAR arrangement. To follow up, the Hong Kong SAR Government is working on reaching such arrangement through discussion with the Central People's Government.

Conclusion

22. Applying the CISG marks an important development of Hong Kong law on international sale of goods, a development we trust both the Hong Kong SAR and its overseas trading partner countries can benefit from. To keep abreast of the development of the CISG in the Hong Kong SAR, you are welcome to visit our Department's featured webpage on the CISG, which contains relevant useful updates, information and resources on the topic.

23. Thank you very much for your attention and I look forward to the insightful discussions and sharing by the other speakers and the Debate Panel. I also wish all participants in this year's Vis East Moot a fruitful and memorable experience!